

Revocation of planning permissions

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1. Historic overview

Since the enactment of the Development Planning Act in 1992, there were five versions of the law regulating permit revocations. As rightly pointed out by Professor Kevin Aquilina,¹ *'the first two attempts verged in opposite extremes of the pendulum'*, whereas the third version, namely Article 39(a) of the 2001 Act tries *'to achieve Aristotle's golden mean'*. Article 39(a) was later substituted by way of Article 77 of the 2010 Environment and Development Planning Act, though the practical ramifications remained unchanged.

Indeed, Article 77(1) of the Environment and Planning Development Act provided that both *'the Authority or the Tribunal'* could entertain a request to revoke a planning permit.

¹Kevin Aquilina: *Rationalising administrative law on the revocation of development permissions*. Bank of Valletta Review, No. 34 - Autumn 2006.

A request for revocation could thus be filed directly with the Tribunal, though such request could not be made before the Tribunal concurrently with an appeal against the decision stemming from that same permit.² In my opinion, this was not necessary since there was never a legal impediment on the part of the Tribunal to treat both considerations concurrently.

2. The new Article 80

In the new Act, permit revocations are regulated by Article 80. As a rule, the basis on which a permit or a clearance may be revoked or modified, remained the same – namely, *'fraud', 'the submission of any information, declaration or plan which is incorrect or does not reflect the situation on site', 'where there is an error on the face of the record'* and also *'where public safety is concerned'*.³ Although the Act clearly states that the permission, clearance or order must be *'granted under this Act'* for it to be revoked, one must bear in mind that those permits which were issued in consonance with the previous Act, whose five year validity period is still in vigore, are likewise exposed to potential revocation.⁴

Like in previous legislation, revocation proceedings must *'commence' within 'five years from the date of issuing of the development permission, clearance or Order.'* Therefore, if the permit is eventually renewed for a consequent five year term, such permit may not

²Cristiano u Daniela konjugi Bagnaschi, Violet Mifsud, Ivan u Maria konjugi Micallef, Maria Stella Callus, Katia Satariano, Ivan Mifsud Bons. kontra l-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar, u l-kjamat in kawza Frank Mifsud decided by the Environment and Planning Review Tribunal on 17th December 2015 - [Ap. No. 198/14 MS. PA 0712/14].

³Article 80 of the Development Planning Act, 2016.

⁴Article 35(3) of the Development Planning Act, 2016 expressly provides that *'Any licence, permission, order, notice or certificate, or any prosecution or charges, granted or made under or kept in force under any of the provisions of the Environment and Development Planning Act, the Building Regulation Act and the relevant provisions of the Code of Police Laws and still in force immediately before the date of coming into force of this Act, shall as from such date continue in force as if it were a license, permission, order, notice or certificate, or prosecution or charges, granted or made under a corresponding provision of this Act.'*

be then revoked on the basis of this Article. This reasoning was held in **Kenneth Bartolo et al. kontra l-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar.**⁵

In contrast with previous legislation, it is now incumbent on the Executive Chairperson to *'prepare his recommendations to the Planning Board as to whether the development permission should be revoked or modified and invite both the applicant and the person making the request, if any, to make written submissions.'* Prior to the enactment of the new Act, a public hearing was not held if the Authority found that there was no *prima facie* case for revocation. Today, all requests are heard by the Board and both applicant and the person filing the request are asked to attend the hearing and make their submissions.

The definition of *'fraud'* and *'incorrect information, declaration or plan'* remained essentially the same. Interestingly, the definition of an *'error on the face of the record''*, previously styled *'an error on the face of a record which offends against the law'*, amounts to *'an error made by the Planning Board in reaching a decision and such error is apparent from the records of its proceedings.'* Primarily, the amended definition provides that the error must be made by the Planning Board. Secondly, the error must be attached to a specific time line, namely *'in reaching a decision'*. Thirdly, the error must be visible in the records of the file.

Previously, the term *'an error on the face of a record which offends against the law'* embraced a much more extensive interpretation. Essentially, any error that offended the law resulting from a simple examination of a document constituted such error. In **Emmanuel Busuttil Dougall vs L-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar**⁶ the

⁵Kenneth Bartolo, Frances Bartolo, James Camenzuli u Denise Camenzuli vs l-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar decided on 17th June 2014 by the Environment and Planning Review Tribunal - [Ap. No. 226/13MS. PA 4917/06].

⁶Emmanuel Busuttil Dougall (bil-karta tal-identita` numru 848754M) vs L-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar, decided on 24th February 2011 by the Court of Appeal (Inferior Jurisdiction) - [Ap. No. 3/2010].

Court confirmed that the site notice was affixed in a wrong location as could be visibly attested from documented evidence. The said evidence purported to show that the affixation of the site notice had not been done according to law and the Court proceeded to confirm the Tribunal's decision to revoke the permit in terms of the then Article 39(a).

In most probability, today, the Court would have decided otherwise since an error should not only result from the records of the file but such an error should be one taken by the Planning Board at decision stage.