



THE PROFESSIONAL CENTRE  
SLIEMA ROAD  
GZIRA GZR 1633 - MALTA  
TEL./FAX. (+356) 2131 4265  
EMAIL. info@ktpmalta.com  
WEBSITE. www.ktpmalta.com

**K A M R A T A L - P E R I T I**

*To support members of the profession in achieving excellence in their practice of architecture and engineering in the interest of the community*

16 April 2018

### **Kamra tal-Periti comments on the proposed amendments to the DNO Classes**

Through a draft Legal Notice which has been published for public consultation, the Planning Authority is proposing to add a new Category Class to the Development Notification Order (DNO). The proposed Class is called **“Existing development related to Malta’s culture and tradition”**.

The only type of development listed under this proposed new Class is described as *“Existing fireworks factories, including their operations, provided that the fireworks factories have been in existence since, or before, the year 1994 and are still currently in existence, as evident from the relative aerial photography of the Authority.”*

The draft Legal Notice goes on to state that such development *“shall be considered permitted development notwithstanding the provisions of Article 3(5) of this Order and notwithstanding anything to the contrary laid down in the Sanitary Regulations; the relevant provisions of the Development Control Design Policy, Guidance and Standards; the Rural Policy and Design Guidance; and all other relevant approved plans and policies under the Act, exceptions, conditions, restrictions, rules, limitations and exclusions.”*

The draft Legal Notice may appear harmless to the untrained eye, however it unravels a myriad of issues which are entirely unacceptable and objectionable. The draft is deceptive in that it hides behind giving the impression that it is introducing a new Class related to culture and tradition, without a clear explanation to allow a proper public consultation process which ensures that the public is fully aware of what is actually being proposed. What is, in fact, being proposed is a blanket amnesty for all illegalities within pre-1994 fireworks factories, irrespective of their compliance with regulations. The inclusion of illegalities under this proposed new Class also means that they are automatically considered as legal, without the need for a planning application to sanction or to regularise.

The *Kamra tal-Periti* objects to the proposal without reservation. The following are the comments of the *Kamra tal-Periti* on the draft Legal Notice:

1. The draft Legal Notice proposes that all pre-1994 fireworks factories are to be considered as “*permitted development*”, and hence legal, even if they are not covered by planning permission. This is nothing but an amnesty, which appears to be targeted at one or two specific situations. A review of the Planning Authority website reveals that there are about four fireworks factories which have been served with Enforcement Notices. At least two of these seem to be eligible to benefit from this proposal, namely the one at *Tal-Boros, Kerċem* which is subject to Enforcement Notice EC/00881/99 for the construction of three workshops, a toilet and kitchen without permit, and the one at *Tal-Għajn, Mellieħa*, which is subject to Enforcement Notice EC/00558/09 for the manufacturing of fireworks within agricultural premises and the construction of seven rooms/structures without permit.
2. The Rural Policy and Design Guidance 2014 already defines the term “*legally established*” as referring “*to any intervention, including land-use change and land reclamation covered by development permission or that which is visible on the 1978 aerial photographs.*” The 1978 cut-off date has been clearly established for properties which lie Outside Development Zone. Why, therefore, is a different cut-off date being established for fireworks factories? This is highly discriminatory and further fuels the impression that this proposal is being introduced to accommodate specific interests.
3. Moreover, the Development Planning Act defines “*illegal works*” as works “*carried out after 1967 and not covered by a development permission issued by an authority related to development.*” Thus, rendering works which have been carried out after 1967 legal through a Development Order, and hence through a legislative measure which is subsidiary to the main Act, is certainly unacceptable.
4. The draft proposes that these fireworks factories will be considered legal “*notwithstanding the provisions of Article 3(5)*” of the Order. For all other Classes listed in the order, this Article stipulates a number of conditions which must be satisfied in order for the development in question to be considered eligible for permission under the Order. There are six pre-requisites, namely that: (a) it does not require the formation, laying out, widening, expansion, extension or re-engineering of a means of access to an existing road; (b) it does not cause any danger to vehicular traffic; (c) it does not require an environmental impact assessment, appropriate assessment, traffic impact

statement, or any other assessment or report required at law; (d) it does not involve or entail the demolition of or damage to rubble walls (*ħitan tas-sejjeġh*), dry-stone huts (*giren*), underground infrastructure, caves, fossiliferous or infilled fissures (*dagħbien*), archaeological features, existing historical buildings or monuments, or cisterns and water galleries; (e) it does not entail the destruction, uprooting or damage to existing trees, unless such works have been approved by the competent authorities; and (f) it does not involve the hacking, or drastic cleaning of stonework by abrasive methods. The proposed Legal Notice states that illegal pre-1994 fireworks factories will be rendered legal even if they result in the impacts listed in Article 3(5). This is completely unacceptable and should not be considered.

5. The draft also proposes that these fireworks factories will be considered legal *“notwithstanding anything to the contrary laid down in the Sanitary Regulations; the relevant provisions of the Development Control Design Policy, Guidance and Standards; the Rural Policy and Design Guidance; and all other relevant approved plans and policies under the Act, exceptions, conditions, restrictions, rules, limitations and exclusions.”* This means that not only is the Legal Notice effectively legalising all pre-1994 fireworks factories, but it is a blanket retroactive amnesty irrespective of its compliance with all applicable regulations and legislation. This is nothing short of an unscrupulous regularisation, which the perpetrators of these illegalities will benefit from without the imposition of any fines or any due assessment, even if the development is blatantly in violation of applicable regulations.
6. Once these factories are considered legal, this means that they could be converted to accommodate other uses. Thus, not only would the Legal Notice be rendering legal an illegality, but it would also be opening up the possibility of the owners of these properties to capitalise on the illegalities by converting them to more profitable uses.
7. The singling out of fireworks factories under the category of *“culture and tradition”* is effectively a discriminatory approach, rather than promoting a fair and just planning system where all typologies are treated in an equal manner.
8. The Development Planning Act stipulates that any classes of development included in a Development Order must be *“within the scope of, and not in conflict with, the proposals contained in any plan or policy approved under this Act.”* If these illegal factories are to be considered legal, even if they are not in line with all applicable

policies, then the inclusion of this new Class under the Order is in direct conflict with and in violation of the main Act.

9. The Development Planning Act also stipulates that a “*development order may include works and activities deemed compatible with the area in which they are being carried out.*” If these factories are illegal, and unlikely to be sanctionable because they do not meet the requirements of existing regulations and policies, then they certainly cannot be considered as compatible with their surroundings, and therefore the inclusion of this new Class under the Order is once again in direct conflict with and in violation of the main Act.
10. The decision to legalise irregularities is essentially a political one, and one which the *Kamra tal-Periti* objects to in principle. The legalisation of these irregularities through a Legal Notice which, in one fell swoop, renders them legal is nothing short of an abuse of legislative power.

The very concept, that whole classes of development are so important that they should be allowed without due process and oversight, betrays a worrying and persisting ignorance of the purpose of development planning and planning control. The ultimate objective of the planning process is the creation of an urban and rural environment of higher quality. The ultimate beneficiary of an environment of higher quality is the citizen; and the citizen has the right to an environment of a high quality.

It is important to ask why it is necessary for these fireworks factories to be rendered legal through this Legal Notice, rather than through the appropriate planning application processes already in place; unless, of course, this is because they would not normally be permitted if the current processes are followed. If this Legal Notice is approved, these illegal developments will be rendered legal without any public consultation, and without any consultation with the relevant Authorities.

**For these reasons, the *Kamra tal-Periti* strongly objects to the proposed Legal Notice, and urges Government and the Planning Authority to review its stance in favour of a more equitable and just solution.**