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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

CIRCULAR 16/2019

1st November 2019

RE: CTBs and Regularisation

In March 2019, the *Kamra tal-Periti* submitted a complaint to the Commissioner for Environment and Planning within the Office of the Ombudsman regarding PA Circular 4/12. Following is a summary of the situation to date, and the *Kamra's* guidance to periti.

Background and Ombudsman's decision

PA Circular 4/12 states that when an application for development permission is submitted on a site which is covered by a CTB concession, then the irregularity *"needs to either be sanctioned or removed, prior to any processing of the application. If the illegal development cannot be sanctioned, a regularisation application would need to have been submitted and approved prior to the planning application being confirmed as complete."*

The *Kamra tal-Periti* requested the Ombudsman's office to investigate this matter, outlining its opinion that holders of CTB concessions for minor irregularities were facing serious risks on their investment unless the Planning Authority changed its interpretation of the law. Banks that have taken such properties as security against mortgages are also at risk in case of default, as the value of such properties may be much lower than expected as a result.

In a decision delivered on the 7th May 2019, the Ombudsman's Office concluded that the above quoted paragraph from the Authority's Circular *"is found to be unfair, irregular and against the principles of natural justice"* and ordered the Planning Authority to *"withdraw and cancel this part of the Circular to the effect that a new application can be submitted on a site covered by a CTB concession without the need for sanctioning, regularising or removing the illegal works covered by the same CTB concession, as long as no further illegal development has taken place on site."*

Latest developments

Despite the passage of several months from such decision, the Circular has not been amended or withdrawn, leaving *periti* and their clients in a quandary as to how to proceed in such cases. The *Kamra tal-Periti* sought clarification from the Ombudsman's office and from the Planning Authority in the past weeks.

In response to such queries, the Ombudsman wrote to the Planning Authority in August, quoting a statement by the Authority in its response of the 21 May 2019 that *"the Authority understands and agrees that applicants requesting development of a site covered by a CTB should not have their application stalled cause of illegalities indicated in the relative concession."*

The Ombudsman noted that *"As this statement contrasts drastically with the contents of the same Circular that is still in vigore ... and since the implementation of the same recommendation*

through a correcting circular is taking too long on such an important issue that affects the multitude, you are hereby urged to finalise this correcting circular whilst the Kamra tal-Periti is also being copied so that the Periti are directed in line with the Final Opinion recommendations.”

In a reply dated 4th September 2019, the Planning Authority stated that it “does not understand that further clarifications were meant to be issued further to its communication dated 21st may 2019, also because the requested clarification transpires from the Law itself through the application of the proviso to sub-regulation 14(1) of the Legal Notice 514 of 2010 read in conjunction with sub-regulation 1(3)(d) of Legal Notice 162 of 2016.”

The Ombudsman responded on the 10th September 2019, stating that “Following the comments in your letter dated 4 September 2019 it appears that the Authority is not taking any action in line with my recommendations within a reasonable time and hence the provisions of sub-article 22(4) of the Ombudsman Act will apply.”

Sub-article 22(4) of the Ombudsman Act states that “If within a reasonable time after the report is made no action is taken which seems to the Ombudsman to be adequate and appropriate, the Ombudsman, in his discretion, after considering the comments (if any) made by or on behalf of any department, organisation or local council affected, may send a copy of the report and recommendations to the Prime Minister, and may thereafter make such report to the House of Representatives on the matter as he thinks fit.”

In response to an additional follow up email from the Kamra tal-Periti, the Ombudsman confirmed, on the 3rd October 2019, that “Following the final opinion the understanding was that this Office would not need to come to this, but this Office is committed to follow the whole procedure afforded by law in the circumstances, that is in order through the Minister concerned, the Prime Minister and publicly in front of the House of Representatives if need be.”

Guidance for periti

Although the matter has not yet been concluded, the Council of the *Kamra tal-Periti* felt it would be opportune to issue this Circular, outlining the current state of affairs, in order to provide guidance to *periti* and their clients on the situation as it stands. *Periti* are invited to quote this Circular and the Ombudsman’s decisions in their proceedings with the Planning Authority and the Environment and Planning Review Tribunal where necessary.

Perit Simone Vella Lenicker
President

Note

All Directives and Circulars are being sent to all periti who are on the Kamra’s database. If you meet colleagues who are not receiving such communications, kindly ask them to send an email to buildingregs@kamrataperiti.org so that the records can be updated.