

MEPA CIRCULAR 4/12

1 PROCEDURE FOR CONCESSION RELATED TO SCHEDULE 8 CATEGORY B OF THE EDP ACT

INTRODUCTION

This circular explains the procedures to be adopted in the implementation of the provisions of LN 229/12 in relation to Article 91, Schedule 8 Category B of the Environment and Development Planning Act CAP 501 2010.

Article 91 (1) states that any person notified with an enforcement notice issued against development in line with the 8th Schedule can request that the execution of the enforcement be suspended. Furthermore, Article 92 (2) prohibits the provision of new water / electrical services unless the development is certified to be in line with permit or is included in Category B of Schedule 8 of the Law. The Legal Notice 229/12 has established which infringements are being included in Category B of the Eighth Schedule. These comprise the following categories, with specific details given in the LN, where they relate only to residences within the development zone and where the said infringements existed prior to 01 August 2012:

- i. The size of the internal yards
- ii. The size of back yards
- iii. The floor to ceiling height
- iv. Room built in back yard

PROCEDURE

As of 01 August 2012 the Authority will be accepting requests submitted by architects on the attached application forms, on behalf of applicants who wish to apply for concessions as listed in the provisions of LN 229/12. These applications are to be submitted with the Authority's Enforcement Directorate and are to include:

- o A duly filled apposite application form (1 original + 1 copy) in which the architect declares that the infringements were constructed prior to 1st August 2012 in accordance with the provisions of LN 229/12. The description of the infringements is to be clear and unequivocal.
- o A recent site plan (3 copies) indicating the location of the development under review and showing the distance from the nearest corner. The development boundary (if applicable) is also to be shown.
- o Colour photo of the façade of the building with the applicant's property clearly marked.

- Comprehensive colour photos of the infringement in question clearly identifying the infringement under review.
- Plan of applicant's property (3 copies) – (These could be submitted at a later stage and not forming part of the 'initial submission'. However, these are still needed for the assessment of the request to commence).
- Section of building (3 copies) – (These could be submitted at a later stage and not forming part of the 'initial submission'. However, these are still needed for the assessment of the request to commence).
 - Plans and section are to include the following colour coding as regards to those areas being requested for assessment:
 - Green* – approved but not constructed
 - Blue* – as actually constructed
 - Red* – as requested by law (in cases where permit is not traced or when yard is bigger than requested by law) where necessary
 - Black* – the rest of the dwelling/block as existing apart from the yard/s and/or rooms that form the subject of this request
 - Measurements relating to size of yards and / or height are to be fully dimensioned and standard metric scales should be used for all drawings.
 - In cases relating to areas – (total area of yard as approved, total area of yard as required by law, total area of yard as built, footprint area of rooms in backyard – as applicable) the plans are to clearly show the resultant areas in square metres.
- Engineer's report where necessary (3 copies). Such a report could be submitted after the 'initial submission' but must still be submitted (if necessary) prior to the commencement of the Authority's assessment. The Engineer is to state that the habitable rooms in the dwelling already have adequate lighting and ventilation, and any specific provisions mentioned in the said engineer's report are to show in the architect's drawings.
- Payment of fee of € 250 per unit. Only payments by cheque or bank drafts will be accepted.

All submitted documentation is to be duly stamped and signed by the applying architect.

One application is to be submitted per residential unit, but each application may include more than one infringement per said unit. Only applications made on behalf of owners, part owners, and rightful occupants will be accepted. In the latter two cases, the attached notification to owners or to other co-owners is to be utilized and copies, together with proof of MaltaPost registered mail, submitted together with the application form.

The Authority will conduct a validation of the request and may request further information or clarifications as necessary.

Once the submission is received in full, the authority will assess its contents vis-à-vis the provisions of the Environment and Development Planning Act's Eighth Schedule Category B, as populated by LN 229/12, and may request further information if necessary.

The result of the assessment will be notified to the applicant and architect. This may either be one of acceptance (i.e. the infringements as cited in this request are in line with the provisions of LN 229/12) or rejection (i.e. the infringements as carried out are not in line with the provisions of LN 229/12). No refund will be issued in the latter cases.

In case of acceptance, an Article 91B Notice will be issued certifying that the infringement/s specified in the request is / are in line with the provisions of Article 91, 8th Schedule Category B. Such a letter will be issued 'saving third party rights' and without providing any vested right on the infringements in question. It is to be clarified that the assessment of these requests and any eventual acceptance thereof will be based on the architect's drawings and declaration, and will only apply to the specific development being applied for as identified in the architect's drawings, and as shown and dimensioned in these drawings.

In such circumstances, and as long as the sole infringements in that dwelling unit are those being covered by these provisions, apart from any enforcement notice not becoming executable by MEPA on these infringements, the applicant could benefit from two concessions, namely:

- a) applications requesting permission for alterations and additions to the same dwelling unit could be accepted (without prejudice to any other requirements); and
- b) a Certificate for the provision of new water / electrical services to the dwelling could be issued as per Article 92 of the Act.

Therefore the first step is the request by an architect to have infringements accepted as qualifying under Article 91 Eighth Schedule Category B. Once and if the request is accepted, an Article 91B Notice would be issued.

At this stage, the applicant and architect may utilize such request to then apply for development permission or for a certificate for service provision. The Article 91B Notice will not have an expiry date, but will only cover the infringements specified, and as shown on the drawings. Any subsequent development permit applications or applications for the issue of Certificates for service provision, will be regulated by the procedures for such applications as applicable at the time of their submission.

It is to be clarified that Article 91 of the Act does not sanction the infringements in question, but it grants the concessions described above. Therefore, if amendments to premises are eventually applied for and the premises contains infringements that would have already been covered by an Article 91B Notice, these must be clearly identified as such on the drawings by the architect, since any eventual permit would not be sanctioning the said infringements unless this is specifically requested and accepted.

For all applications submitted within the 6 months period from the coming into force of these regulations, it shall be presumed that the development to which the request refers to existed prior to such date as long as the architect submitting the request certifies that the development to which the request relates to had existed prior 01 August 2012, and

as long as there is no evidence to the contrary, or that no such evidence to the contrary subsequently emerges.

During the first six months period commencing on 01 August 2012, the Authority will accept either 'full submissions' or 'initial submissions'. The latter must still include the application form, site plans, colour photo of the façade (identifying applicant's property), comprehensive photos of the infringements and the payment of fee. The necessary plans, sections, and Engineer's report (if applicable) can then be submitted at a later stage by the architect, but the Authority will not commence any assessment of the request for an Article 91B Notice until all the necessary documentation would have been submitted. This allowance is being made so as to provide adequate breathing space for architects.

The Legal Notice specifies that in the case of requests made after the lapse of the 6 months period, the onus of proof that infringements being applied for existed prior to 01 August 2012, lies with the applicant and/or architect. All applications submitted after the first 6 months period must therefore include adequate proof to this effect to the satisfaction of the Authority.

31st July 2012