



QORTI TAL-APPELL

(KOMPETENZA INFERJURI)

(TRIBUNAL TA' REVIZJONI TAL-AMBJENT U L-IPPJANAR)

ONOR. IMHALLEF MARK CHETCUTI LL.D.

Illum L-Erbgha, 22 ta' Gunju, 2016

Numru 9

Appell Nru. 9/2016

Mario u Maryanne konjugi Sammut

vs

**L-Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar
illi permezz ta' AL 109 tal-2016 assumiet l-obbligazzjonijiet ta'
Awtorita ta' Malta dwar l-Ambjent u l-Ippjanar u
l-kjamat in kawza Paul Falzon ghan-nom ta' Tlata Limited**

Il-Qorti,

Rat ir-rikors tal-appell tat-terzi interessati tad-19 ta' April 2016 kontra d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-30 ta' Marzu 2016 li approvat PA 2914/14 soggetta ghal kondizzjoni dwar 'mitigation matters' li jirrigwarda 'part demolition, dangerous roof replacement and construction of restaurant and bar area on two floors, utilising existing roof structuresw', fir-Rabat, Malta;

Rat ir-risposti tal-applikant u l-Awtorita li ssottomettew li l-appell ghandu jigi michud u d-decizjoni tat-Tribunal konfermata;

Rat l-atti kollha u semghet lid-difensuri tal-partijiet;

Rat id-decizjoni tat-Tribunal li tghid hekk:

Ikkunsidra:

Ra r-ragunijiet ta' l-appell hekk kif gej:

"1.1 Fl-ewwel lok, jidher car illi l-apprezzament u l-assessment li sar mill-Awtorita fil-kaz odjem kien ghal kollox zbaljat.

1.2 Is-sit in kwistjoni ghandu faccata fuq is- secondary town centre ta' Rabat, u dan skont dak provdut fin- North West Local Plan tas-sena 2006. Pero, u skont l-istess Pjan, l-istess sit huwa kantuniera, u b'hekk ghandu faccata fuq zona li hija desinjata bhala residential area.

1.3 Illi l- policy li tirregola Secondary Town Centres hija Policy NWCM 1. L-istess policy titkellem car illi l-uzu kompemplati fl istess policy japplikaw ghall- ground floor level. Izjed minn hekk, skont l-explanatory text ta' l-istess policy, u b'mod partikolari il paragrafu 7.2.4 jitkellem car dwar il-fatt illi l-iskala ta' l-izvilupp propost ghandha tkun tali li timminimizza l-possibilita ta' impatt negattiv. U dan tenut kont li hawn si tratta ta' centri sekondarji firhula zgħar u storici. Issir ukoll referenza ghall- policy 1.1 tad-DC 2007.

1.4 Illi l-proposta li giet approvvata tikkompreni restaurant u bar mifruq fuq tlett sulari kif ukoll l-uzu tal-gallarija u tal-bejt għall-istess skop. L-area totali hija ta' izjed minn 400m.sq. b'customer area ta' 253m², b'hekk kellha il-htiega ta' 23 spazju.

1.5 Illi m' hemmx dubju illi l-izvilupp propost imur kemm kontra il- policy NWCM1, id-DC 2007, kif ukoll kontra dak provdut fil-Pjan ta' Struttura, tenut kont tal-fatt illi is-sit de quo jinsab kantuniera ma residential area. Illi fl-ebda stadju ma saret analizi akkurata ta' kif 1 izvilupp propost kien ser jimpatta iz-zona residenzjali li magħha 1 istess sit imiss.

1.6 Illi l-estent u l-iskala ta' l-izvikupp approvat imur kontra il-policy tal-Pjan Lokali kif ukoll il-policies tal-Pjan ta' Struttura, u ma' sar l-ebda tentattiv, skont dak li tghid l-istess policy, sabiex wiehed jevalwa tali impatt, jew li jimminimizza l-istess impatt. Illi m'hemmx dubju illi l-uzu tas-sulari kollha, inkluz il-bejt u 1 gallarija, għal uzu kummercjali, certament ser jikkawza inkonvenjent u impatt serju fuq il-girien.

1. 7 Illi f dan il-kaz issir referenza għal PA 3119/13, u wiehed ma jistax jifhem kif f dan il-kaz l-istess Awtorita irrifjutat il-permess, filwaqt li fil-kaz odjem, lanqas biss kien hemm tentattiv sabiex 1 izvilupp ikun kontenut għas-sular ground floor. Illi bhal ma għamel id-Direttorat fil-kaz hawn riferut, issir

referenza ghas-sentenza tal-Onorabbli Qorti ta' l-Appell fl-ismijiet Silvio Debono vs. Awtorita', fejn l-istess Qorti ikkonfermat illi policy trid tingara fit-totalita taghha u mhux in parti jew b'mod selettiv. F'dan ir-rigward issir referenza ukoll ghad-decizjoni ta' l-istess Onorabbli Qorti fl-ismijiet Manduca vs. Awtorita'.

1.8 Illi ghaldaqstant johrog bic-car illi l-EPC iddecieda hazin meta huwa approva l-applikazzjoni in kwistjoni a bazi tar-ragunijiet rakkomandati mid-Direttorat ta' l-Ippjanar.

Ghaldaqstant, l-appellant qed jitlob li l-files li rrefera ghalihom jigu vverifikati mit-Tribunal u dan billi l-Awtorita' ghandha tigi mitluba sabiex tipprezenta l-jiles msemija minnu u lit-Tribunal, u in segwitu ta' dan l-istess Tribunal ghandu jhassar id-decizjoni ta' approvazzjoni mehuda mill-EPC fil-kaz odjem, u tenut kont ta' dak sottomess u li ghad jrid jigi sottomess, jiddeciedi l-applikazzjoni billi, filwaqt li jirreferi u japplika il-policies attwalment applikabbli, jilqa it-talba ta' l-appellanti u jordna li jinhareg ir-rifjut relattiv, u dana taht, u minghajr pregudizzju ghal kull decizjoni jew provvedimento iehor li joghgbu jiehu dan it-Tribunal.”;

Ra r-risposta ghal dan l-appell tal-Awtorita' li taqra' kif gej;

“5.2.1 Introduction

In comments submitted, the appellant is raising a number of issues:

Given that the site is a corner building, it has a frontage on the Secondary Town Centre and another façade overlooking a Residential Area.

Policy NWCM 1 sets out the acceptable uses at ground floor level and para. 7.2.4 states that the scale of the development should minimize the negative impact on the surroundings.

The proposed development runs counter to Policy NWCM1 and the DC2007 in view that the development is corner with a residential area and no assessment on the impact on this area was carried out.

The extent of the development on three floors plus the terrace at roof level would have a negative impact on the adjacent dwellings.

The appellant cannot understand why in PA 3119/13 the proposal was refused, contrary to the case in question.

5.2.2 Approved Development vis-à-vis Policy NWCM1

The appellant is arguing that the approved restaurant runs counter to Policy NWCM1 in view that the policy allows Class 4D uses at ground floor and the scale of the restaurant on three floors is excessive and would create nuisance to the neighbourhood. The Authority wishes to clarify that the policy does not limit the use as a Class 4D restaurant to just ground floor level. On the other hand, the policy sets the acceptable uses which are permitted only at ground floor level, only at upper floor level or at any level. As in other uses

such as offices, education facilities, shops and assembly and leisure, Class 4D use was not limited to just ground floor or upper floors.

However, food take-aways are not allowed at upper floor level.

Therefore, the Authority was right to consider the proposed restaurant as compliant with Policy NWCM 1 of the North West Local Plan.

5.2.3 Alleged nuisance to the neighbourhood

With reference to the third party appellant's comment that the approved restaurant would have a negative impact on the surroundings, the Authority notes that the necessary studies have been carried out and were considered to address the concerns by the neighbours. IN it's DPA report, the Authority notes that:

"As indicated by the fire safety and ventilation report prepared by a warranted engineer, fumes from the cooking area will be extracted by means of a flue that will be according to MEPA's directives relating to exhaust flues used in catering establishments (doc. 15A & drwg. 73B). Therefore, with respect to fumes' management the proposal complies with Policy 15.5 of DC2007. Also, drwg. 62A & site plan 1F indicate that the proposed flue will not terminate in shaft or yard serving residential properties / within 4m of windows of any residential property or adjoining roof. Therefore, with respect to fumes' management the proposal complies with Policy 15.5 of DC2007.

As regards noise, the engineer proposed mitigation measures (sound and vibration deadening shall be provided by mounting the extraction fan onto rubber mounts & all duct mounts shall have rubber washers isolating any vibration and white noise travelling up both ducts - doc. 15A)."

Therefore, the statement by the third party appellants who are alleging that the Authority has made no assessment to study the impact of the restaurant on the neighbourhood is not correct since the Authority's position was strengthened by two reports prepared by a warranted engineer.

5.2.4 Quoted PA 3119/13

The third party appellant is referring to PA 3119/13 in which the Authority has refused a Class 4D outlet in view that the proposal would have had a negative impact on the residential area and because the flue would obstructed the natural light and ventilation required by the adjoining residential property. In PA 3119/13, the proposal was located just opposite a villa area which more stringent planning consideration from terraced areas.

Whist the Tribunal is invited to take note of the above short comment, the Authority reiterates that the quoted case does not have identical planning considerations to the case under appeal as can be verified through the file itself in the light of its location, surroundings and any other particular planning considerations which had resulted in a negative conclusion.

6.0 REQUEST

6.1 For the above-mentioned reasons, the Malta Environment & Planning Authority respectfully requests the Environmental and Planning Review Tribunal to confirm the decision of the EPC.”;

Ra r-risposta ghal dan l-appell tall-Avukat Dottor Tanya Sciberras Camilleri ghall-applikant li taqra hekk kif gej:

“Niktbu fuq inkarigu ta' Paul Falzon ghan-nom u fl-interess ta' Tlata Limited u nirreferu ghall -appell intavolat minn Mario u Maryanne konjugi Sammut, wara l-approvazzjoni tal applikazzjoni PA 2914/14 favur il-klijent tiegħi u li jkopri l-fond 1, Triq San Pawl, kantuniera ma' Triq il-Karrijiet, Rabat, Malta u li jirreferi għall-izvilupp segwenti:

"Part Demolition, dangerous roof replacement and construction of restaurant and bar area on two floors, utilising also existing roof structures"

Fl-ewwel lok u preliminarjament, għandu jigi determinat jekk l-appellanti humiex "registred objectors" ai termini tal-Kap 504 tal-Ligijiet ta' Malta. Oltre dan, għandhom jindikaw 1 interess tagħhom fil-permess mahrug favur il-klijent tiegħi.

Mingħajr pregudizzju għas-suespost, jigi rilevat illi s-sit jinsab kantuniera bejn Triq San Pawl u Triq il-Karrijiet u faccata tal-pjazza magħrufa bħala "l-Għalqa ta' Kola" fejn prezentement hemm il-parkegg tal-karrozzi fil-lokalita tar-Rabat kif ukoll it-terminus tal-karrozzi tal-linja li jaslu r-Rabat.

Is-sit huwa mdawwar minn diversi stabbilimenti tal-ikel, kif ser jigi ampjament ippruvat waqt it-trattazzjoni ta' dan l-appell oltre hwienet ohra ta' diversi generi . Dawn l-istabbilimenti jinsabu kemm gewwa Triq il-Karrijiet kif ukoll gewwa Triq San Pawl u uhud minnhom jibqghu miftuha anke matul il-lejl jew jifthu kmieni hafna filghodu.

Illi għandu jingħad illi dan is-sit jinsab proprju ftit metri 'l bogħod mit-terminus tal-karrozzi tal-linja tar-Rabat Malta u li din il-lokalita tinsab ukoll fuq ir-rotta ta' karrozzi ohra turistici li jduru mal-Gzejjer Maltin.

Minn ezami tal-appell, jirrizulta illi l-lanjanza tal-appellanti tirrigwarda l-fatt 1li, skond huma, l-policy applikabbli huwa NWCMI li jirrestringi l-uzu kontemplat fil-policy għall-"ground floor level". Oltre dan, l-appellanti jagħmlu riferenza għall-policy 1.1 ta' Policy & Design Guidance 2007 u jgħidu illi l-proposta tmur kontra l-Pjan ta' Struttura, għalkemm ma jagħmlu ebda riferenza għal xi policy specifika.

Illi b'risposta għal dawn il-lanjanzi, l-applikant jirrispondi hekk:

Illi fl-ewwel lok, is-sit in kwistjoni jinsab kantuniera bejn triq illi tinsab definita bħala "Ra bat Secondary Town Centre" u "Residential Area";

Illi għalkemm Triq il-Karrijiet hija definita fil-Pjan Lokali bħala Area Residenzjali, dina hija biss deskritta bħala tali fuq il-karta, peress illi tul is-

snin izda partikolarment fis-snin ricenti, hargu numru ta' permessi ta' natura kummercjali, inkluzi permessi li jirrigwardaw bejgh ta' ikel, f'din l-istess triq.

Illi f'dan ir-rigward, ssir riferenza ghall-permess PA 4840/10 li gie approvat fil-31 ta' Mejju 2011 ghal zvilupp kummercjali u li jkopri l-fond 6/7, Triq il-Karrijiet, Rabat. Il-permess inhareg ghas-segwentu zvilupp:

"Change of use from Class VI to Class V, proposed signage, internal alterations and proposed changes to material on the facade"

Bhala motivazzjoni ghall-approvazzjoni tal-permess, intqal hekk:

Approved in view that restaurant approved in PA4070/06 red 61 included a bar of 103sqm which is considered in a residential area. This has a greater adverse impact on the residential amenity than the proposal. Although the development hereby approved exceeds the maximum of 75sqm of Class 5, the additional floor space is still below that approved as a bar.

Ghandu jinghad illi l-permess PA 4840/10 huwa t-tielet permess illi nhareg fuq is-sit, stante illi kien gie approvat il-permess PA 4070/06 fuq l-istess sit ghas-segwentu zvilupp:

"Demolition of existing building and erection of a new building comprising a class 6 shop and snack bar"

Illi precedentement, kien diga gie approvat il-permess PA 5530/05 fid-9 ta' Marzu 2006 ghas-segwentu zvilupp:

"Amendments and alterations to existing building including change in use to class 6 snack bar"

Il-hrug ta' dan il-permess gie gustifikat mid-DCC ghas-segwentu raguni:

Approved 5-0 in view of the parking availability in the area and the possibility of improvement in that stretch of the block.

Illi ghal dak li jirrigwarda Triq San Pawl, din hija definita bhala Secondary Town Centre u ghalhekk, hija regolata skond il-policy NWCMI. Pero, kuntrarjament ghal dak li gie allegat mill-appellanti, mhuwiex minnu illi l-uzu approvat jista' jsir biss fil-"ground floor level". Minn qari tal-policy relattiva, huwa car illi din ir-restrizzjoni tirreferi biss ghal takeaways mentri f'dan il-kaz, si tratta ta' restaurant u bar li huwa differenti.

Illi kif ser jigi ampjament ippruvat waqt it-trattazzjoni ta' dan l-appell, Triq San Pawl huwa mizghud bi hwienet tax-xorb, snack bars u anke ristoranti u ghalhekk, wiehed ma jistax jimmagina r-raguni ghaliex l-appellanti qed joggezzjonaw proprju ghal dan il-permess meta hemm mhux inqas minn tmien hwienet ta' din ix-xorta f'din it-triq, li uhud minnhom jifthu sahansitra matul il-lejl u kmieni filghodu. Hafna minnhom ilhom ezistenti f'din it-triq ghal snin shah, sahansitra qabel it-twaqqif tal-Awtorita filwaqt illi ghandu jinghad

illi kien inhareg l-permess tat-tip "outline" bin-numru PA 2224/03 li kien gie approvat fit-3 ta' Frar 2006 u li jkopri l-fond 62, Triq San Pawl, Rabat. Il-permess ikopri s-segweni zvilupp:

"Alterations and extension to premises and change of use to catering outlet and retail units"

In segwitu ghall-hrug ta' dan il-permess, kien inhareg il-permess "full" li jgib in-numru PA3877 /06 li minnu kien sar third party appeal quddiem dan it-Tribunal. Kopja tal-istess qed tigi hawn annessa minn fejn jirrizulta illi f'dan il-kaz, kien hem m kunsiderazzjonijiet ta' natura storika u/jew arkeologika li mhux il-kaz ghall-appell odjern, izda l-appellanti kienu qed jilmentaw ukoll minn "bad neighbourliness". Fid-decizjoni tieghu tad-29 ta' Novembru 2011, il-Bord tal-Appelli dwar l-ppjanar kien zied numru ta' kundizzjonijiet sabiex jiprotegi l-wirt storiku tal-fond izda ddikjara illi l-uzu approvat kien skond il-policies meta qal hekk:

"Il-fond jinsab gewwa secondary town centre, f' arja li skond il-Pjan Lokali hija idoneja ghall-attivita' 'klassi 6 - ikel u xorb'.

Illi ghandu jinghad illi dan il-fond ilium jikkonsisti minn tlett ihwienet tal-catering ossia pizzeria, restaurant u salumeria.

Illi ghalhekk, jigi rilevat illi l-Pjan Lokali certament jaccetta l-izvilupp propost. Minghajr pregudizzju ghal dan, jigi osservat illi, sussegwentement ghall-approvazzjoni tal-Pjan Lokali fis-sena 2006, gie approvat il-policy FL-GNRL-1 f'Jannar 2013 intitolat:

"Partial Review of Subsidiary Plans: General Policy relating to Regeneration/Consolidation Initiatives"

Illi skond l-istess policy ta' Jannar 2013, dan kien intiz sabiex jaghti lill-Awtorita il-flessibilita' f'certi sitwazzjonijiet fejn ikun desiderabbli u jaghmel sens mil-lat ta' ppjanar illi l-Awtorita tkun gustifikata illi tiddipartixxi mill-policies anke f'zoni ta' Turizmu.

Illi l-policy FL-GNRL-1 tippermetti lill-Awtorita sabiex jiddipartixxi b'mod gustifikabbli m ill interpretazzjoni ristretta tal-policies f'postijiet u f'cirkostanzi fejn dan huwa gustifikat. L applikant jissottometti illi l-approvazzjoni ta' dan il-policy ikompli jsahhah l-argument illi, l-Awtorita sahsitra wessghet il-policy sabiex, f'certu kazijiet, tali zvilupp jistghu jigu permessi.

Fl-ahhar nett, issir riferenza ghall-applikazzjoni PA 3119/13 citata mill-appellant u li giet rifjutata. Bir-rispett kollu, ic-cirkostanzi partikolari dwar din l-applikazzjoni m'ghandhom x'jaqsmu xejn mal-permess mertu ta' dan l-appell, fosthom illi, fil-kaz citat, il-hanut kien sotto post ghar-residenzi ta' terzi, mentri f'dan il-kaz, il-proprjeta kollha tappartjeni lill applikant u mhux ser ikun hemm "mixed use" fuq is-sit.

Illi in konkluzzjoni u fic-drkostażi, dan it-Tribunal qiegħed jintalab jichad l-appell tal appellanti u jikkonferma l-hrug tal-permess PA 2914/14 favur l-applikant li jirrizerva d-dritt minn issa illi jipproduci provi u jagħmel sottomissjonijiet ulterjuri waqt il-kors tal-appell.”;

Ra l-Policy NWCM 1 tan-North West Local Plan;

Ra l-PA files 2914/14, u PA 3119/13;

Ra l-atti kollha ta' dan l-appell.

Ikkunsidra ulterjorment:

Illi aggravju ewlieni mressaq fir-rikors tal-appell jirrigwardja l-interpretazzjoni tal-Policy NWCM 1 fil-Pjan Lokali (North West Local Plan) li skont l-appellant l-uzu kontemplati fl-istess policy japplikaw biss fil-livell terran, ossia: ground floor level.

Illi din il-policy suċitata tal-Pjan Lokali tirregola d-diversi uzu permissibbli f'Secondary Town Centre bħal ma jinsab is-sit inezami. Din il-policy hija s-segwent:

“The Local Plan designates the following Secondary Town Centres within the Local Plan area: Mellieha, St.Paul's Bay and Rabat.

The boundaries of each Town Centre are indicated on the appropriate Area Policy Maps.

The acceptable land uses (new uses, extensions to existing uses, and change of uses) at ground floor within all frontages within the Secondary Town Centres, but outside the Urban Conservation Area, are:

i. Class 1 (Use Classes Order, 1994) dwelling units on upper floors only. Proposals for residential development at ground level will only be considered by MEPA provided that the proposed development scheme includes one dwelling unit only. Conversions from existing commercial uses at ground floor level to new residential units will not be permitted by MEPA.

ii. Class 2 (Use Classes Order, 1994) residential institutions on upper floors only.

iii. Class 3 (Use Classes Order, 1994) hostels and hotels provided that these uses are in accordance with all other relevant Local Plan policies.

iv. Class 4, (Use Classes Order, 1994) retail uses including shopping malls and speciality shopping, but excluding showrooms, provided they comply with the provisions of MEPA's Interim Retail Planning Guidelines (2003) and supermarkets provided that they comply with all the provisions of Policy NWCM 7.

v. Financial, professional and other offices (Class 5, Use Classes Order 1994, ;

vi. Food and drink (Class 6, Use Classes Order 1994,) provided hot food take aways are not located above ground floor;

vii. Non-residential institutions (Class 7, Use Classes Order 1994,) including interpretation centres. However public halls are to have a floor area that does not exceed 150 sqm. viii. Class 8 (Use Classes Order, 1994) education facilities;

viii. Assembly and Leisure (Class 9, Use Classes Order 1994.);

ix. Class 11 (Use Classes Order, 1994) business and light industry provided that

- The gross floor area of the premises does not exceed 50 sqm (including storage of materials and/or finished products);
- The activity conducted within the premises does not use heavy duty and/or noisy electrical/mechanical (including pneumatic) equipment, and equipment which requires a 3 phase electricity supply;
- The activity conducted within the premises does not entail extensive and/or prolonged use of percussion hand tools (eg. hammers, mallets etc);
- The activity employs less than 5 people; and
- The activity conducted within the premises does not inherently entail the generation of combustion, chemical or particulate by products.

Examples of acceptable uses considered by MEPA include tailor, cobbler and computer repair. Moreover, examples of unacceptable uses include carpentry, panel beating, mechanic, mechanical plant servicing and spray painting.

Proposals to convert from existing Class 12 (Use Classes Order, 1994) general industry to Class 11 (Use Classes Order, 1994) business and light industry within designated Town Centres shall only be considered acceptable by MEPA if all the conditions listed above are adhered to, and provided that it can be proven that the Class 12 Use (general industry) operation is a permitted one and the Class 11 Use (business and light industry) operation is actually more neighbourhood compatible than the Class 12 Use operation it intends to replace.

x. Class 17 (Use Classes Order, 1994) storage facilities only provided that the gross floor area does not exceed 75 sqm.

xi. Taxi Business or for the hire of motor vehicles.

xii. Band club and social club. xiv. Cleaning of clothes in venues where articles are brought by the public, provided that the gross floor area does not exceed 75 sqm.

xiii. Conference Centre.

xiv. Indoor shooting range provided that all the conditions of the Guidance on Shooting Ranges are fully adhered to.

xv. Bakery and Confectionery with provision for outside catering

For frontages within the Secondary Town Centres lying within Urban Conservation Areas, the uses listed above will be accepted provided the interventions on the historic fabric comply with the requirements of the Development Control within Urban Conservation Areas policy of 1995.

MEPA will support initiatives from public agencies, NGOs and the private sector, which contribute to the enhancement of the external environment of town centres and add to their vitality as a retail and social/community hub. Proposals for pedestrianisation schemes and traffic management will also be considered favourably.”

Illi minn ezami tal-policy sucitata, jirrizulta illi filwaqt li fil-parti inizjali tal-policy tindika acceptable land uses at ground floor within all frontage within the Secondary Town Centres, il-lista ta' uzu permissibli fil-paragrafi numri 'i' sa 'xvii' jindikaw b'mod aktar car f'liema livell ta' sulari l-uzu relattiv jista' jitqies permissibli.

Madankollu, f'kaz ta' zona ta' Konservazzjoni Urbana bhal ma jinsab is-sit inezami, ma jidhirx illi l-policy qed tillimita l-uzu unikament fil-pjan terran, hekk illi filwaqt li fl-ewwel parti tal-policy teskludi zoni ta' Konservazzjoni Urbana, l-istess policy tiddedika paragrafu specifiku aktar l-istess fl-istess test, li jipprovdi dan li gej: “For frontages within the Secondary Town Centres lying within Urban Conservation Areas, the uses listed above will be accepted provided the interventions on the historic fabric comply with the requirements of the Development Control within Urban Conservation Areas policy of 1995.”

F'dan ir-rigward, dan it-Tribunal mhux tal-fehma illi l-policy tikkunsidra biss uzu fil-pjan terran, u dan anke kif gie spjegat mill-Awtorita' fir-risposta taghha ghal dan l-appell, f'paragrafu 5.2.2. Inoltre, f'kaz ta' zona ta' Konservazzjoni Urbana, il-policy sucitata ma taghmel ebda limitazzjoni dwar il-lokazzjoni tal-uzu fil-bini, ghalkemm tirrikjedi li l-intervent fil-bini jissodisfa l-kriterji tal-linja gwida dwar zvilupp f'zoni ta' Konservazzjoni Urbana tal-1995. Ghaldaqstant dan l-aggravju qed jigi michud.

Illi l-appellant qed jinsisti illi l-estent tal-izvilupp li jikkonsisti minn restaurant fuq tlett livell, ossia il-pjan terran, l-ewwel sular u l-livell tal-bejt huwa wiehed eccessiv u ser ikollu impatt sostanzjali u nkonvenjent serju tenut kont li dan jinsab biswit zona residenzjali. L-appellant zied ukoll illi minn naha tal-Awtorita' ma sar ebda tentattiv sabiex jigi evalwat u jimminimizza tali impatt negattiv.

F'dan ir-rigward l-appellant ghamel ukoll referenza ghall-paragrafju numru 7.2.4 fil-Pjan Lokali li huwa wiehed mill-paragrafi spjeggtivi tal-policy NWCM 1 sucitata u li jaqra hekk kif gej:

“Not all centres, particularly small and historic towns, will have sites that are suitable in terms of size, parking, traffic generation or servicing arrangements for large-scale developments in the town centre itself. In such centres, development should be of a scale appropriate to the size of the centre in order to minimise the potential for adverse impact. This policy seeks to control the scale of development within those parts of the town centres having conservation value and which have been designated as urban conservation areas. Applicants should make every effort to integrate successfully new development into the townscape of existing centres.”

Illi f'dan il-kaz, dan it-Tribunal huwa tal-fehma illi l-iskala ta' zvilupp fl-applikazzjoni odjerna hija wahda kompatibbli u idoneju f'zona kummercjali, hekk kif is-sit jinsab ukoll f'wahda miz-zona turistika ewlenin kemm fiz-zona tal-Pjan Lokali kif ukoll fuq skala nazzjonali. Is-sit jinsab fil-pereferija tal-lokalita' tar-Rabat, f'zona mill-aktar turista minhabba l-vicinanza tal-Imdina u attrazzjonijiet turistici ohra kif ukoll biswit zona ta' parkegg ewlieni li jinsab bejn il-lokalita' tar-Rabat u l-Imdina.

Illi dan it-Tribunal jidhirli li f'dan il-kaz l-Kummissjoni tal-Ambjent u l-Ippjanar applikat tajjeb il-policies li jirregolaw l-izvilupp f'din il-parti tal-lokalita' tar-Rabat li hija wahda mit-tlett centri kummercjali fiz-zona kollha tal-Pjan Lokali fejn hu permess stabbilimenti tal-ikel u xorb. F'dan il-kaz, l-izvilupp permess huwa kompatibbli fiz-zona kummercjali hekk kif giet identifikata fil-pjan lokali, u ghaldaqstant f'termini ta' ppjanar, dan huwa konformi mal-principji elenkati fil-Pjan ta' Sruittura.

F'dan ir-rigward, dan il-permess lanqas ma jista jitqies simili ghall-applikazzjoni PA3119/13 citat mill-appellanti. Din l-applikazzjoni ta' zvilupp jikkonsisti minn proposta ta' hanut tal-ikel u xorb fi Triq il-Pitkali f'Hat-Attard u gie rifjutat mill-Awtorita' minhabba mpatt negattiv fuq ir-residenzi tal-madwar. B'differenza ghal kaz odjern, dan il-kaz citat jinsab f'Local Centre, u mhux f'Town Centre, fejn fil-kaz tal-ewwel l-uzu principali huwa dak relatat ma local use, fejn l-uzu kummercjali huwa meqjus bhala servizz sabiex itejjeb ir-residential amenity. F'dan il-kaz, mhux biss illi s-sit jinsab f'lokalita' u fi Pjan Lokali differenti, imma l-kontroll tal-izvilupp skont il-policies relatati ma local centre huma pjuttost differenti mill-policies li jirregolaw l-izvilupp f'Town Centre bhal ma jinsab is-sit inzami.

Illi f'dan l-aggravju l-appellanti ma pprezentaw l-ebda prova sabiex jissostanzjaw l-allegazzjoni ta' impatt negattiv jew inkonvenjenza. Minn naha l-ohra bhala parti mill-process tal-applikazzjoni odjerna, gie prezentata u finalment approvat Fire Safety, Ventilation and Noise Mitigation report skont id-dokument a fol 15A,73B-73E fl-inkartament tal-PA 2914/14. Illi f'dan il-kaz, l-appellanti naqsu li jissostanzja l-allegazzjonijiet migjuba f'dan l-aggravju u kif il-mitigazzjonijiet approvati f'dan ir-rapport tekniku mhux sufficjenti sabiex inaqqsu l-allegat impatt u inkonvenjent bl-operat tar-restaurant kif approvat.

Minn l-oħra, dan it-Tribunal seta' jinnota li d-dokument dwar Fire Safety, Ventilation and Noise Mitigation report a fol 15A fl-inkartament tal-PA 2914/14 ma jipprezenta l-ebda mitigazzjoni dwar il-hsejjes li jista jirrizulta minn zvilupp mertu ta' dan l-appell. F'dan il-kaz, dan it-Tribunal filwaqt li qed jichad l-appell interpost, ser jimponi amenda fil-permess de quo, b'dan illi l-engineer's report ghandu ukoll jinkludi dawn il-mitigazzjonijiet dwar il-hsejjes li jistghu jigi ggenerati mill-operat tal-istess restaurant.

Ghal dawn il-mottivi, dan it-Tribunal qed jichad l-appell, jikkonferma l-permess PA 2914/14, b'dan illi fi zmien 30 gurnata mid-data ta' din id-decizjoni, l-applikant ghandu jipprezenta Fire Safety, Ventilation and Noise Mitigation report amendat sabiex jinkludi dawk il-mitigazzjonijiet necessarji sabiex jikkontrolla l-inkonvenjent tal-hsejjes prodotti mill-attivitá' tar-restaurant.

L-Awtorita' ghandha fi zmien tletin guranta mill-prezentazzjoni ta' tali dokument u wara li tkun sodisfatta bil-Fire Safety, Ventilation and Noise Mitigation report kif amendat, ghandha tinkludi dan ir-rapport bhala parti mid-dokumentti approvati fil-permess PA 2914/14 minflok id-dokument a fol PA 2914/14/15A.

Ikkunsidrat

L-aggravji tal-appellant huma s-segwenti:

1. It-Tribunal inkorra zball meta pprova jiskuza jew jifhem kif l-Awtorita applikat il-policy NWCM1. It-Tribunal ma setghax jassumi hu dan il-kompitu izda messu baghat kollox lura lit-Tribunal. Fil-fatt it-Tribunal fehem li l-Awtorita waslet ghad-decizjoni taghha ghax tezisti eccezzjoni fil-policy meta l-izvilupp isir f'UCA meta dan hu kontra l-principju tal-policy. In oltre hadd mill-partijiet ma qajjem l-argument li fil-policy hemm eccezzjoni illi r-restrizzjoni tal-ground floor ma tapplikax ghal zvilupp fil-UCA u kuntrarju ghal dak li qal it-Tribunal mhux minnu li l-Awtorita qajmet dan il-punt. In oltre l-policy taghmel kjarifika fil-kaz ta' UCA mhux eccezzjoni tant li jekk wiehed jaqra d-DC Urban Conservation Policy 1995, l-uzi indikati fil-policy NWCM1 mhix kollha accettabbli. Kull ma ghamlet il-policy f'kaz ta' Secondary Town Centre li ghandu faccata f'UCA hu li gie iccarat li l-uzi accettabbli huma dawk fil-policy NWCM1 u mhux dawk fil-policy DC 1955;
2. It-Tribunal wasal ghal konkluzzjoni soggettiva u gratwita meta qies li l-izvilupp qiegħed f'zona turistika ewlenija fil-pjan lokali u fuq skala nazzjonali u dan peress li l-pjan lokali jagħmel zoni specifici markati bhala Entertainment Priority Areas u Tourism Zones u l-pjan lokali ma jindikax ir-Rabat u l-Imdina bhala tourism zones. Il-

pjan lokali jsemmi r-Rabat jew l-Imdina ghal fatt ta' numru ta' vizitaturi minhabba r-riekzza kulturali li fihom fil-kuntest tal-isfidi u l-impatt fuq il-komunita u l-istess wirt kulturali. Il-pjan lokali ma jasserix kif fehem it-Tribunal li b'daqshekk l-aspett turistiku tar-Rabat jimmilita favur l-izvilupp;

3. It-Tribunal wasal ghal konklużjoni konfligjenti meta f'nifs ighid li l-appellanti naqsu li jgibu provi kontra l-mitigazzjoni tal-impatt u inkonvenjent bl-operat ta' restaurant kif propost u dan a bazi ta' rapport li jirrigwarda mizura ta' mitigazzjoni u fl-istess nifs it-Tribunal qies li l-istess rapport ma jipprezentax mitigazzjoni ta' hsejjes li jirrizultaw mill-izvilupp. Nonostante dan cahad l-appell u approva l-izvilupp;

4. Konsegwenti ghat-tielet aggravju, it-Tribunal kellu jilqa' l-appell u jordna l-applikant jaghmel dak mitlub mit-Tribunal ghax dan hu l-uniku mezz legali kif Tribunal revizorju jista' b'xi mod jiddisturba decizjoni li qed jirrevedi.

L-ewwel aggravju

Hi l-fehma tal-Qorti illi dak li qed jitolbu l-appellanti f'dan l-aggravju hu jekk l-interpretazzjoni moghtija mit-Tribunal ghal policy NWCM1 hix wahda gusta jew hi errata. Il-Qorti ghamlitha cara f'diversi sentenzi illi ma tindahalx f'interpretazzjoni moghtija mit-Tribunal sakemm tali interpretazzjoni tmur kontra l-kliem espress tal-policy jew hi tant assurda li mhix biss qed tikkreja ingustizzja fil-parametri tal-applikazzjoni li tkun qed tigi kunsidrata izda li wkoll tista' titfa' dubju u incertezza fuq applikazzjonijiet futuri.

F'dan il-kaz il-policy NWCM1 giet trattata mill-partijiet u t-Tribunal. Mhux minnu li t-Tribunal approva jifhem jew jikkoregi lil Awtorita fl-applikazzjoni tal-policy. It-Tribunal wasal ghal fehmiel tieghu fuq il-portata tal-policy minn kliem l-istess policy. It-Tribunal spjega kif il-policy tqis x'inhu accettabbli bhala uzu f'diversi siti kif elenkati fil-policy u kif l-istess siti jindikaw b'mod aktar car liema livell ta' sulari certu uzu hu permissibbli. Zied li fil-kaz tas-sit in kwistjoni cioe mhux biss f'Secondary Tower Centre f'uzu accettabbli fi ground floor, izda f'zona ta' konservazzjoni urbana, ma hemmx limitazzjoni ghal uzu fil-pjan terran biss kif jidher mill-paragrafu dedikat lil siti f'UCA.

Il-Qorti qrat il-policy u filwaqt li tqis li tali policy hi suxsettibbli ghal diversi modi ta' interpretazzjoni, ma tqis illi l-policy teskludi l-interpretazzjoni moghtija mit-Tribunal

liema interpretazzjoni mhix xi wahda assurda li ma taghmilx sens. Hi x'inh i l-fehma tal-Qorti kieku kellha tinterpreta l-policy hi ma ghandhiex tinterferixxi fuq id-diskrezzjoni tat-Tribunal sakemm uzata b'mod li ma jmurx konta l-kelma espressa tal-policy u fil-limitu tar-ragonevoli meqjus dak li hemm kontenut fl-istess policy. Il-fatt li l-appellant ma jaqbilx mal-interpretazzjoni moghtija ma jfissirx li ghandu ragun. Aggravju irid ikun dirett lejn applikazzjoni hazina tal-policy mhux interpretazzjoni diversa izda plawsibbli u rilevanti daqs dik argumentata mill-appellant.

L-argument tat-Tribunal hu illi l-policy qed tindika acceptable land uses at ground floor level izda fejn il-policy ma tindikax mod iehor billi kif ghamlet teskludi espressament uzu ulterjuri oltre l-ground floor f'siti partikolari, ma jfissirx li uzu f'siti ohra fejn hu permess zvilipp indikat fl-istess policy u ma hemmx limitazzjoni ghal ground floor biss ghandu jkun limitat biss ghal ground floor u ma jstax jigi estiz ghal sulari ohra dment li jigu sodisfatti aspetti relatati ta' ppjanar mal-izvilupp propost. Izid illi fil-kaz ta' siti bhal dan in kwistjoni li jirrigwarda mhux biss zvilupp ta' class 4D f'Secondary Town Centre imma wkoll f'UCA, ma hemm ebda limitazzjoni fuq l-estensjoni tas-sit ghall-uzu rikjest.

L-argumenti ghamilhom it-Tribunal mill-fatti esposti u mill-argumenti maghmula. Il-Qorti ma taqbilx mal-appellant li l-kwistjoni kif impostata ma tqajmitx quddiem it-Tribunal u zzid li t-Tribunal kellu kull dritt illi jikkunsidra l-policy mill-ottika legali tieghu anki jekk il-partijiet ma jkunux qajmu l-istess argument. Dan wara kollox hu l-kompitu tat-Tribunal. Dan hu differenti minn punt ta' ligi li ma johrogx mill-kontestazzjoni jew aggravju li qatt ma tqajjem u li wassal it-Tribunal ghad-decizjoni li jkun ha. F'dan il-kaz it-Tribunal kellu quddiemu applikazzjoni ta' policy partikolari u kellu kull dritt jesprimi ruhu b'argumenti legali gustifikativi ghad-decizjoni tieghu anki jekk mhux imqajma mill-partijiet.

Ghalhekk dan l-aggravju qed jigi michud.

It-tieni aggravju

Dan l-aggravju fih il-mertu tieghu jekk fil-fatt ir-Rabat mhux intiz bhala tourist zone, pero fil-kuntest ta' din l-applikazzjoni, l-argument tat-Tribunal li s-sit jinsab f'zona turistika ma kinitx ir-raguni ewlenija jew principali li waslu ghad-decizjoni. Tali

decizjoni kienet tkun l-istess peress illi t-Tribunal sostna l-accettabilita għall-izvilupp fuq il-policy NWCM1 u mhux għax qiegħed f'zona frekwentata minn hafna turisti għalkemm it-Tribunal uza l-aspett turistiku tas-sit, fiz-zona li qiegħed, biex juri illi s-sit hu idoneju għal stabbiliment ta' restaurant u bar. Il-Qorti ma tara xejn soggettiv jew gratwitu f'din l-asserzjoni peress illi t-Tribunal hu munit bl-esperti li għandhom l-esperjenza necessarja biex jikkunsidraw in-natura taz-zona fejn jinsab is-sit. It-Tribunal ikkonsidra li l-izvilupp hu kompatibbli fiz-zona fejn qiegħed cioe wiehed kummercjali u għalhekk konformi mal-pjan ta' zvilupp. L-argumenti tal-appellant f'dan l-aggravju huma ta' natura aktar ta' fehma differenti fuq il-kejl ta' kif għandu jitqies is-sit li qiegħed f'zona fejn jigu hafna nies speċjalment turisti jzuru l-wirt kulturali li joffri r-Rabat.

Għalhekk dan l-aggravju ma jistax jigi milqugh.

It-tielet aggravju

Dan l-aggravju ma fihx mertu għax it-Tribunal għamel zewg argumenti distinti wiehed fil-konfront tal-appellanti li ma resqux oggezzjonijiet validi għar-rapport ta' mitigazzjoni. Pero fil-konfront tal-istess rapport, it-Tribunal qies illi ma kienx tali li jiggarrantixxi bizzejjed mizuri kontra l-hsejjes.

Ir-raba' aggravju

Il-Qorti tqis illi t-Tribunal għandu l-jedd li fid-decizjoni jagħti dawk l-ordnijiet u provvedimenti inkluz li japprova zvilupp soggett għal kondizzjoni, bħal dan il-kaz, li jigi prezentat rapport aktar idoneju quddiem l-Awtorita, approvat mill-istess Awtorita biex jimmitiga hsejjes generati mill-uzu ta' restaurant. Din il-kondizzjoni ma kinitx timpingi fuq l-aggravju izda fuq il-permess innifsu li għalhekk accettat u approvat mit-Tribunal, kellu jinkludi fih kundizzjoni aktar stretta ta' mitigazzjoni ta' hsejjes. L-artikoli 41(13) u 41(14) tal-Kap. 504 fil-fatt jagħti dan id dritt lit-Tribunal. Ma hemm xejn fil-ligi li jimponi fuq it-Tribunal li japprova r-rapport hu u mhux l-istess Awtorita li trid tohrog il-permess.

Decide

Ghalhekk il-Qorti taqta' u tiddeciedi billi tichad l-appell tal-appellanti u tikkonferma d-decizjoni tat-Tribunal ta' Revizjoni tal-Ambjent u l-Ippjanar tat-30 ta' Marzu 2016, bl-ispejjez kontra l-appellanti.

Onor. Mark Chetcuti LL.D.

Imhallef

Anne Xuereb

Deputat Registratur