QORTI TA' L-APPELL

IMHALLFIN

S.T.O. NOEL V. ARRIGO LL.D. - PRESIDENT
ONOR. JOSEPH D. CAMILLERI B.A., LL.D.
ONOR. JOSEPH A. FILLETTI B.A. LL.D., A.R.HIST.S.

Seduta ta' nhar il-Gimgha, 31 ta' Mejju, 2002.

Numru 6

Appell numru 257/97

Joseph Cassar

vs

Awtorita' ta' l-Ippjanar

Il-Qorti;

I. PRELIMINARI

1. Fl-4 ta' Settembru 1989, il-Planning Areas Permits Boards kien hareg permess lil Joseph Cassar ("l-appellant") sabiex huwa jkun jista' jibni dar fuq zewg sulari f'Gajdoru Street, Xaghra Ghawdex. Dan il-permess jidher li gie mgedded fit-12 ta' Frar 1992 mill-istess Planning Areas Permits Board.

2. Fid-29 ta' April 1993, l-Awtorita' tal-Ippjanar harget kontra l-appellant avviz ta' twettieq fuq l-allegazzjoni li kien qieghed isir skavar fuq is-sit, liema skavar kien sular aktar fil-fond indikat fil-permess imsemmi fil-paragrafu precedenti. Minhabba din ic-cirkustanza l-appellant applika mill-gdid ghall-permess tal-izvilupp bazikament biex ikun hemm tibdil fil-permess li diga' kien approvat fis-sens li l-gholi tal-bini min-naha tat-triq ikun ghal sular wiehed u jkun hemm permess ghal basement f'sular iktar fil-fond biex vis-à-vis il-permess precedenti.

4. Fl-24 ta' Mejju 1996, l-appellant inghata rifjut ghall-applikazzjoni ghall-permess ta' bini fuq imsemmi. Dana ghal hames ragunijiet li testwalment jaqraw hekk :-

> "1. Structure Plan policy RCO provides that, particularly within Rural Conservation areas, areas of scenic value will be protected and enhanced. The area in which the site is located is of considerable scenic value. The proposal would detract from this, and so it would conflict with Structure Plan policy RCO 4.
>
> 2. The proposed development is incompatible with the urban design and environmental characteristics of the area. It would not maintain the visual integrity of the area and so does not comply with Structure Plan policy BEN 2.
>
> 3. Development of this site would compromise the Planning Authority's ability to review the layout and other provisions of the Temporary Provisions Scheme through the Local Plan process as proposed in Structure Plan policies SET 8 and BEN 4. The proposal is therefore premature and counter to Structure Plan policies SET 8 and BEN 4.
>
> 4. The site is located in an Area of Ecological Value as indicated on the Structure Plan Key Diagram, where further human intervention, particularly in the form proposed, is not desirable. The proposal would therefore adversely affect the

area, hinder its protection, and run counter to the rural conservation and ecological objectives of the Structure Plan.

5. The proposed development runs counter to RCO 21 as there is general presumption against development in areas prone to erosion."

5. Billi l-appellant hassu aggravat minn din id-decizjoni tal-Awtorita' tal-Ippjanar, liema decizjoni ttiehdet wara proceduri ta' rikonsiderazzjoni, l-appellant interpona appell mill-istess decizjoni quddiem il-Bord tal-Appell dwar l-Ippjanar ("il-Bord"). Fl-appell tieghu l-appellant ressaq l-aggravji tieghu fil-konfront tal-hames ragunijiet li nghataw mill-Awtorita' tal-Ippjanar ghar-rifjut tal-permess. Is-sottomissjonijiet tal-appellant huma teswtalment dawn :-

"1) L-ewwelnett il-lokalita' fejn jinsab is-sit in kwistjoni mhix "a Rural Conservation Area". Infatti Gajdoru Street hija an Urban Area u ilha mijiet ta' snin okkupata mid-djar ta' abitazzjoni fuq iz-zewg nahat tat-triq. Ta' min jghid ukoll illi s-sit fejn applika l-klijent tieghi ilha fid-development zone sa mill-elf disa' mija u sitta u sittin u kienet immarkata fil-blue line li huwa l-linja li kienet turi fejn seta' jsir l-izvilupp, liema blue line kien sar mill-espert Shiskovsky, espert barrani mqabbad mill-Gvern ta' dakinhar. Dan il-blue line gie dejjem segwit ghal snin shah sa meta nhargu t-Temporary Building Plans ta' l-1988. Ta' min jghid ukoll li jekk wiehed jara s-sheet No. 7 tal-pjanti approvati mill-Parlament is-sit tal-klijent tieghi hija mmarkata bil-kulur brown u dana il-kulur brown hu ta' profondita' mit-triq 'l gewwa ta' cirka tnax-il qasba. Dan il-kulur brown li huwa indikazzjoni li hemm hekk huwa tajjeb ghall-izvilupp huwa matul Gajdoru Street kollha.

Mhux veru illi l-area in kwistjoni hija wahda ta' 'scenic value' li ghandha tigi protetta jew 'enhanced' ghaliex is-sit tal-klijenti tieghi jinsab bejn bini qadim min-naha l-ohra. Barra minn dan, Gajdoru Street hija llum prattikament mibnija fuq iz-zewg nahat tat-triq u kull ma fadal huma ftit infill sites zghar bhalma hi s-sit tal-klijent tieghi. Ta' min jghid ukoll li c-Chairman tad-DCC fis-seduta tat-22 ta' Mejju 1997 meta gie trattat dan il-kaz, attira l-attenzjoni tal-membri tal-Bord illi proprju ftit qabel kienu ghadhom kif approvaw

applikazzjoni ghal bini fl-istess triq fuq l-istess naha tat-triq thares ghal fuq il-wied u li dik is-sit kienet tefa' ta' gebla 'l boghod mis-sit tal-klijent tieghi.

Irrid nghid ukoll illi l-Planning Area Permits Board fl-4 ta' Settembru, 1989 kien hareg lill-klijent tieghi permess tal-bini fuq l-istess sit li jgib in-numru PB3483/89/2139/89 liema permess tal-bini gie rinovat fit-12 ta' Frar, 1992 skond ma jidher fl-annessi dokumenti "A" u "B". Ta' min jghid ukoll illi meta kien ghaddej ix-xoghol preliminari ta' tindif tas-sit in kwistjoni waqt li kien ghadu in vigore il-permess kif imgedded, harget stop notice sabiex il-klijent tieghi jieqaf mix-xoghol u dan ma setax ikompli. Il-Perit Rueben Abela kien iddiskuta l-kaz mal-perit sottoskritt u qallu kif kellha ssir l-applikazzjoni mill-gdid bi pjanti differenti liema pjanti huma identici ghal dawk ezistenti fl-applikazzjoni tal-lum u barra minn dan il-Perit Reuben Abela ghan-nom tad-Direttorat ghamel rapport li fih irrakommanda illi din l-applikazzjoni tigi approvat. Meta l-kaz resaq quddiem il-Bord tad-DCC il-Perit Reuben Abela nzerta ma kienx prezenti u kien prezenti minfloku l-Perit Victor Sladden. Inzerta kien prezenti wkoll il-Perit Gorg Cilia li beda jipprotesta ghaliex kienet saret din il-minuta mill-Perit Reuben Abela u l-Perit Victor Sladden b'ghageb ta' kulhadd u f'kwistjoni ta' sekondi qabel u rtira r-rakkomandazzjoni ghall-approval minghajr lanqas biss ma ta l-icken raguni ghal din ir-*roundabout turn*.

Fl-umli sottomissjoni ta' l-esponenti dan ma kienx agir serju pero' huwa fatt illi l-membri tad-DCC gew konfuzi u l-vot gie ugwali u l-kaz gie riferut ghall-Awtorita' ta' l-Ippjanar.

Zmien wara l-kaz rega' tressaq mhux quddiem l-Awtorita' ta' l-Ippjanar imma quddiem l-istess Bord tad-DCC b'xi membri differenti ghax sadanittant lahaq inbidel il-Bord u nghata refusal.

2) Mhux veru illi l-izvilupp propost huwa nkompetibbli ma' l-urban design u l-environmental characteristics ta' l-area. Infatti l-bini fuq iz-zewg nahat tas-sit tal-klijent tieghi huwa bini qadim imtella' minn isfel u jiena bhala responsabbli qghadt attent illi naghmel pjanta mtarga fuq wara sabiex il-bini ma jigix totalment vertikali u l-hajt tal-bitha li jigi fil-lower basement ser ikun miksi bis-sejjiegh sabiex ikun konformi ma' l-area. Fil-fatt iz-zewg sulari l-ohra jkunu jidhru l-istess bhal djar ohra b'zewg sulari fl-istess area. Wara kollox dawn il-pjanti ghamilthom in konsultazzjoni mal-Perit Rueben Abela li kien gie fuq is-sit.

3) Ta' min jghid illi minn meta gie on site il-Perit Rueben Abela sal-lum ma nbidel xejn fil-lokalita' hlief illi gew approvati izjed applikazzjonijiet fuq l-istess naha tat-triq ghall-bini u

ghalhekk konna ferm sorprizi kif id-Direttorat ghal xejn b'xejn ried jibdel id-decizjoni tieghu w issa johrog b'ideja izjed goffa illi jghid li "Development of this site would compromise the Planning Authority's ability to review the layout and other provisions of the Temporary Provisions Schemes through the Local Plan process."

Infatti l-klijent ma jistax jifhem kif ghal mijiet ta' piedi t-triq gew zviluppati kollha bil-permessi mahruga mill-PAPB u d-DCC u issa ghal ghoxrin pied tal-klijent tieghi d-Direttorat ippretenda li ghandha ssir ingustizzja mal-klijent tieghi billi jigi *singled out* minn fost hafna individwi ohra u ma jinghatalux permess bhalma nghataw lill-ohrajn.

(4) Mhux veru li s-sit jinsab f''area of Ecological Value" tant hu hekk illi l-Bord tad-DCC ghadu sal-lum stess johrog permessi f'din l-area u kif ghidt izjed 'il fuq fuq ic-Chairman tad-DCC stess qal li kien ghadhom kif approvaw applikazzjoni ghal bini fuq l-istess naha tat-triq u ftit 'il boghod mis-sit tal-klijent tieghi.

(5) Bir-rispett kollu l-klijent tieghi ma jistax jifhem xi jrid jghid id-Direttorat li l-area hija "prone to erosion" ghaliex il-lokalita' hija area tal-bini, mibnija fil-maggoranza assoluta taghha fiz-zewg nahat tat-triq kompriza anki mill-*home ownership scheme*.

L-esponenti jinvoga favur tieghi d-decizjoni ta' dan il-Bord fl-appell numru 282/94KA fl-ismijiet *Victor Theuma vs il-Kummissjoni ghall-Kontroll ta' l-Izvilupp* li affermat il-principju li meta fuq sit partikolari jkunu nhargu permessi tal-bini (permess mahrug u li rega' gie mgedded) s-sid ghandu *a vested right* li jerga' jinghatalu permess sabiex jibni u dan ghas-semplici raguni li la darba s-sit ikun *committed* ifisser li d-decizjoni tkun ittiehdet. F'dan il-kaz is-sit huwa diga' mhammel u ma tlestiex il-bini ghaliex il-klijent tieghi gie mwaqqaf. Dan jakkwista izjed forza fid-dawl tal-fatt li d-Direttorat ma kienx oggezzjoni ghall-applikazzjoni, u mbaghad ghal xejn b'xejn u kapricozament u minghajr ma nbidlu c-cirkostanzi qabad u rtira r-rakkomandazzjoni ghall-approvazzjoni li kien ghamel.

Fl-ahhernett il-klijent tieghi xtara l-art bhala fabrikabbli ghaliex meta ccekja s-sheet relattiva huwa sab illi din l-area kienet brown area kif ghadha hekk sal-lum."

6. Il-Bord sema' lill-partijiet u lid-difensuri taghhom. Zamm access fuq il-fond meritu tal-appell fis-17 ta' Gunju, 1997, u ha konjizzjoni tas-sottomissjonijiet bil-miktub li ghamlulu l-partijiet. Inoltre l-Bord ezamina

d-diversi applikazzjonijiet ghall-permess ta' zvilupp li gew riferiti lilu mill-partijiet. Huwa utili li jigi riportati hawnhekk is-sottomissjonijiet li ghamlet l-Awtorita' tal-Ippjanar fil-konfront tal-aggravji li ressaq l-appellant quddiem il-Bord :-

> "The applicant has now requested that the application be considered by the Appeals Board and, a detailed letter for consideration was submitted. The appellant's architect in his letter of appeal put forward the following points:
>
> (a) site in question is not a Rural Conservation Area. Gajdoru Street is in fact an urban area and development has occurred throughout the years on both sides of the road. Furthermore the site is within the development zone. The site is immediately contiguous to two old dwellings on both sides. The surrounding area is practically all built up.
>
> (b) the proposed development's back elevation is staggered so that the building would not be wholly vertical. Therefore the development is not incompatible with the urban design and environmental characteristics of the surrounding area.
>
> (c) the site cannot be considered to be of ecological value since development applications are still being issued in the area.
>
> (d) the area is identified for development and as such cannot be prone to erosion.
>
> Although it is true that the site falls within the development zone, according to the Temporary Provisions Schemes the appellant's site lies within an area where RCO policies apply, since the whole island is a Rural Conservation Area by virtue of the Structure Plan's Key Diagram. The Structure Plan states that development which affects the scenic value of a particular site is not permitted. It is considered that if the dwelling house is built, the area below it would be destroyed.
>
> Having regard to the nature of this proposal and to RCO policies, the Directorate does not consider that there are any exceptional circumstances to justify departure from the overall presumption of development which disrupts its surroundings because of its mass and location and, adversely affects the rural element of the visual composition.

The presence of other development in the immediate surrounding area whether they be illegal, legal, with a permit issued by the PAPB or a permit issued by the Planning Authority is immaterial. This can never be used as an argument to justify further development on any site whether it be outside or inside the development scheme boundary. In addition, the site is situated in a long stretch of ridge which is yet undisturbed and, which should remain as such for the enjoyment of future generations.

The proposal has a discernible impact on the environmental quality of the existing area. The proposed development, if approved, would make it more difficult for the Planning Authority to resist other, equally unsatisfactory development proposals which, both individually and cumulatively lead to the erosion of the inland cliff, a characteristic habitat of the Gozitan environment. The Directorate thereof is aptly concerned over the potential harm to the ecological value of the inland cliffs.

Although there are existing buildings on this part of the road the actual depth of the building on the horizontal level is so short as to necessitate construction in the vertical sense thereby obliterating the natural environment of the cliff face. The additional height of the current proposal below the street level is a matter of concern. There is little doubt that the dwelling would form a visually prominent intrusion into the cliff environment making the dwelling unduly obtrusive when viewed across from the village of Nadur and the valley leading to the Rampla l-Hamra and, detracting from the character of the countryside. The development would seriously affect visual amenity that no amount of landscaping would reduce that impact.

Regarding the point made by the appellant in arguing that a development permit was already issued for the site in 1989, one must cite the appeal of A. Farrugia vs Planning Authority where the Court of Appeal declared that applications are decided according to plans and polices of today and not according to the date of application (24 April 1996). Therefore nothwithstanding previous consent and the time that elapsed between the two, a recommendation for refusal is deemed acceptable.

The main question that has to be answered is whether or not the impact of the development is sufficient to justify refusal, taking into account the fact that the site is zoned as a brown area.

On balance, it is considered that the previous refusal for planning permission from the DCC is justified. The applicant arguments

> for consideration are not wholly sound and a refusal is again recommended.
>
> In conclusion the applicant has raised no new issues which would assist their application. The case has already been full considered as evidenced by the very clear reasons for refusal given by the DCC.
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> The fact that the site has become degraded due to excavation works cannot be used as an argument to justify development. Structure Plan policy RCO 6 does in fact provide for "….. a programme of enhancement and management of ….. rehabilitation of degraded habitats.""

7. Fid-9 ta' Settembru 1997, il-Bord ta d-decizjoni tieghu li biha cahad l-appell tal-appellant u kkonferma r-rifjut tal-permess tal-izvilupp. Din id-decizjoni tirrapporta testwalment is-sottomissjonijiet kollha li ghamlu l-partijiet quddiem l-istess Bord u l-parti konkludenti tad-decizjoni li fiha l-motivazzjoni kollha tal-Bord taqra hekk :-

> "Ghalkemm huwa minnu li s-sit meritu ta' dan l-appell jinsab fiz-zona permessa ghall-izvilupp skond it-Temporary Provisions Schemes relattiva ghax-Xaghra, dan mhux necessarjament ifisser li l-appellant ghandu xi dritt awtomatiku ghall-permess. Dan qed jinghad peress li Policy SET 9 taghmilha cara li l-Pjan ta' Struttura jissupera lis-Schemes. Terga skond l-istess Policy SET 9, l-Awtorita' ta' l-Ippjanar ghandha tikkunsidra applikazzjonijiet ghal zvilupp skond Polices BEN 1, BEN 2, BEN 3, BEN 4, u SET 7.
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> Il-Bord huwa tal-fehma li l-izvilupp propost jikser il-Polices BEN 2 u BEN 4 apparti policies ohra ta' l-istess Pjan li jikkoncernaw Rural Conservation Area, msemmija fir-ragunijiet moghtija ghar-rifjut tal-permess."

<u>II. L-APPELL</u>

8. Minn din id-decizjoni tal-Bord l-appellant interpona appell quddiem din il-Qorti. L-appellant qed jitlob lil din il-Qorti li joghgobha tirrevoka d-decizjoni appellata tal-Bord u minflok tordna l-approvazzjoni tal-applikazzjoni tieghu ghall-kontinwazzjoni tal-izvilupp tas-sit in kwistjoni. L-appellant immotiva l-aggravji tieghu b'dan il-mod :-

> "L-Onorabbli Bord tal-Appell dwar l-Ippjanar inkorra f'interpretazzjoni u applikazzjoni hazina tal-ligi ghall-fatti ta' dan il-kaz meta rritjena illi zviluppi f'siti vicini ma jintitolawx lill-applikant ghall-hrug ta' permess fuq is-sit de quo; u illi l-applikazzjoni odjerna ghandha tigi governata mill-pjanijiet u policies vigenti llum.
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> Infatti l-Bord irritjena illi "ghalkemm huwa minnu illi s-sit meritu ta' dan l-appell jinsab fiz-zona permessa ghall-izvilupp skond it-Temporary Provisions Scheme relativa ghax-Xaghra, dan mhux necessarjament ifisser li l-appellant ghandu xi dritt awtomatiku ghall-permess". Aktar 'il quddiem l-istess Bord irritjena illi "The presence of other development in the immediate surrounding area, whether they be illegal, legal, with a permit issued by the PAPB or a permit issued by the Planning Authority is immaterial."
>
> Aktar importanti, imbaghad, il-Bord irritjena wkoll illi: "Regarding the point made by the appellant in arguing that a development permit was already issued for the site in 1989, one must cite the appeal of "A. Farrugia vs Planning Authority : where the Court of Appeal declared that applications are decided according to plans and policies of today and not according to the date of application" (24 April 1996).
>
> Bazikament, il-Bord tal-Appell qieghed jirritjeni illi l-fatt illi l-esponenti gja' ghandu permess validu mahrug lilu illi jkopri is-sit in kwistjoni huwa immaterjali ghad-decizjoni jekk l-applikazzjoni odjerna ghandhiex tigi akkolta jew le.
>
> Bir-rispett kollu, din l-argumentazzjoni kollha tal-Bord tal-Appell hija sillogistika u fallaci ghall-ahhar. Il-Bord qieghed jikkonfondi l-kwistjoni dwar jekk <u>is-sit de quo</u> huwiex kopert b'permess validu mal-kwistjoni totalment differenti jekk <u>siti vicini</u> humiex koperti b'permessi validi.

L-esponenti qieghed isostni illi galadarba fuq is-sit de quo gja' nhareg permess illi kien validu fiz-zmien meta nhareg, u galadarba gja' nbdew ix-xogholijiet ta' tahmil fuq l-istess sit in ezekuzzjoni ta' tali permess, (u anke jekk xi parti minn dawn ix-xogholijiet kienet tmur oltre il-permess mahrug dakinhar), dan is-sit huwa "committed" fis-sens illi sid l-istess sit ghandu issa dritt kwezit illi jkompli bl-izvilupp tieghu fuq dan is-sit. Galadarba, l-awtoritajiet kompetenti minn zmien ghal zmien kienu awtorizzaw illi jinbdew xogholijiet ta' kostruzzjoni fuq sit partikolari, u dawn ix-xogholijiet ikunu effettivament inbdew, ma hux permess lill-Awtorita' tal-Ippjanar illi tapplika ghal dan is-sit pjanijiet u policies godda illi jkunu gew introdotti wara l-hrug tal-ewwel permess fuq is-sit de quo sabiex bis-sahha taghhom tipprojbixxi illi jsir zvilupp illi jkun gja' gie sanzjonat. Altrimenti, l-Awtorita' tal-Ippjanar tkun qieghda tirrendi retroattivament illegali dak illi qabel kien legali. Lanqas ligi tal-Parlament, l-oghla awtorita' legislattiva fil-pajjiz ma tista' taghmel dan, wisq u wisq anqas ma tistax taghmlu l-Awtorita' tal-Ippjanar, minkejja dak kollu illi l-membri tal-Bordijiet fi hdan din l-Awtorita' jistghu jahsbu.

Ghaldaqstant il-policies kollha citati kemm mill-Kummissjoni ghall-Kontroll tal-Izvilupp kif ukoll mill-Bord tal-Appell bhala bazi tac-cahda tal-applikazzjoni odjerna huma totalment irrilevanti u inapplikabbli ghall-kaz odjern.

Hekk ukoll hija rrilevanti ghall-kaz odjern id-decizjoni ta' din l-Onorabbli Qorti "Farrugia vs Planning Authority". Dik il-kawza kienet tirrigwarda liema policies ghandhom japplikaw ghad-decizjoni ta' applikazzjoni fuq sit biex insejhulu hekk "vergini" fis-sens illi fuqu ma kien hemm qatt mahruga xi permessi qabel. Il-kaz odjern huwa totalment differenti minn dak il-kaz. F'dan il-kaz, kif intqal diga', is-sit kien gie "committed" u dwaru kien gja' nhareg permess ghall-izvilupp, u kienu gja' nbdew ix-xogholijiet in ezekuzzjoni ta' dak il-permess. Ghaldaqstant il-karattru ta' dan is-sit gie irrevokabilment kompromess fis-sens illi dak gie dikjarat sit zviluppabbli. Policies illi gew in vigore sussegwentement ghall-hrug tal-permess originali u l-bidu tax-xogholijiet ta' zvilupp in ezekuzzjoni ta' dak il-permess huma ineffikaci fuq l-istess sit."

9. L-Awtorita' tal-Ippjanar ikkontestat dana l-appell billi rriteniet illi d-decizjoni appellata tal-Bord kienet wahda gusta u timmerita konferma. Inoltre l-Awtorita' tat ukoll eccezzjoni preliminari li biha irriteniet li l-appell odjern kien null peress li wiehed jista' jappella minn decizjoni tal-

Bord biss fuq punti ta' ligi decizi mill-Bord. L-Awtorita' ssottomettiet li fil-kaz odjern l-allegati aggravji da parti tal-appellant ma kienux marbuta ma' konsiderazzjonijiet jew interpretazzjoni ta' ligi u dan partikolarment meta wiehed jikkonsidra li l-istess Bord lanqas biss dahal jew iddecieda xi punt ta' ligi.

III. KONSIDERAZZJONIJIET TAL-QORTI

10. Qabel ma din il-Qorti sejra tghaddi ghall-konsiderazzjonijet taghha, tixtieq tirregistra l-fatt li dan l-appell gie ampjament trattat mill-partijiet. Infatti huma mhux biss trattaw oralment il-kaz fis-7 ta' Frar 2000 izda wkoll issottomettew noti ta' osservazzjonijiet kemm dwar il-punt jekk il-kaz kienx jirrigwarda punt ta' ligi deciz mill-Bord u ghalhekk kienx appellabbli jew le u kemm ukoll fuq l-aspett aktar fattwali tal-kaz. Hawnhekk il-Qorti qieghda taghmel riferenza ghan-nota tal-appellant tat-12 ta' Lulju 1999 li permezz taghha huwa anke esebixxa diversi dokumenti li jispjegaw ahjar il-kaz tieghu kif ukoll ghar-risposta tal-Awtorita' tal-Ippjanaripprezentata fis-6 ta' Awissu 1999.

11. Premessa ohra li tixtieq taghmel din il-Qorti hija li l-motivazzjoni kollha tal-Bord tinsab f'zewg paragrafi fl-ahhar tad-decizjoni tieghu, li jaqraw hekk :-

> "Ghalkemm huwa minnu li s-sit meritu ta' dan l-appell jinsab fiz-zona permessa ghall-izvilupp skond it-Temporary Provisions Schemes relattiva ghax-Xaghra, dan mhux necessarjament ifisser li l-appellant ghandu xi dritt awtomatiku ghall-permess. Dan qed jinghad peress li Policy SET 9 jaghmilha cara li l-Pjan ta' Struttura jissupera lis-Schemes. Terga skond l-istess Policy SET 9, l-Awtorita' ta' l-Ippjanar ghandha tikkunsidra applikazzjonijiet ghal zvilupp skond Policies BEN 1, BEN 2, BEN 3, BEN 4, u SET 7.
>
> Il-Bord huwa tal-fehma li l-izvilupp propost jikser il-Policies BEN 2 u BEN 4 appati policies ohra ta' l-istess Pjan li jikkoncernaw Rural Conservation Area, msemmija fir-ragunijiet moghtija ghar-rifjut tal-permess."

Id-decizjoni tal-Bord hija mifruxa fuq hmistax-il pagna. Il-pagni kollha li jippreceded dawn iz-zewg paragrafi li appena gew citati jikkoncernaw bazikament is-sottomissjonijiet bil-miktub li ghamlu l-partijiet li gew riportati fid-decizjoni tal-Bord.

13. Bir-rispett kollu dovut, din il-Qorti ma tistax ma tikkummentax li l-istruttura tad-decizjoni appellata tal-Bord tidher pjuttost zbilancjata. Dana billi jidher car illi l-Bord iddedika hafna spazju ghar-riproduzzjoni testwali tas-sottomissjonijiet bil-miktub tal-partijiet u ddedika verament ftit spazju ghall-konsiderazzjonijiet tieghu stess. Infatti l-konsiderazzjonijiet tal-Bord huma distillati fiz-zewg paragrafi appena citati, b'mod li l-motivi tac-cahda tal-appell huma espressi f'termini kwazi telegrafici. Prattika din, li, ghall-ksib tal-vantagg tal-ispeditezza tista' thalli lill-parti telliefa bla sodisfazzjon adegwat ghaliex l-appell ikun gie michud.

14. Analizi tal-imsemmija zewg paragrafi krucjali li bihom giet konjuza d-decizjoni tal-Bord tindika li l-Bord ghamel is-segwenti konsiderazzjonijiet;

(a) Li l-Bord accetta li s-sit tal-appellant jinsab f'zona li fiha huwa permess zvilupp skond it-Temporary Provision Scheme relattiva ghax-Xaghra.

(b) Hawnhekk il-Bord ikkummenta li dan il-fatt wahdu ma kienx jintitola lill-appellant ghal xi dritt awtomatiku ghall-permess. Jekk dak il-kumment jinvolvi xi punt ta' ligi din il-Qorti taqbel mal-konkluzjoni tal-Bord li l-ghoti jew ic-cahda tal-permess tal-izvilupp huwa dejjem marbut ma' ezami tal-proposta specifika li l-applikant ikun qieghed jaghmel lill-Awtorita' tal-Ippjanar. Dana jfisser li jekk persuna ghandha sit f'zona li l-izvilupp fiha jkun permess, dana ma jfissirx li din il-persuna hija awtomatikament intitolata li tinghata permess ghal kull xorta u tip ta' zvilupp li hija titlob. Biex tali permess tal-izvilupp johrog, il-proposta trid tkun necessarjament kompatibbli mad-diversi konsiderazzjonijiet teknici tal-ippjanar li jkunu jirregolaw il-kaz.

(c) Kumment iehor tal-Bord kien li skond il-Policy SET 9, il-pjan ta' struttura jissupera t-Temporary Provision Scheme. Din il-Qorti jidhrilha li l-kelma li uza l-Bord "jissupera", forsi ma tantx kienet wahda felici. Forsi kien ikun ahjar li ntuzat il-kelma "jikkumplimenta". Pero', jekk il-

kumment tal-Bord fih involuta fih decizjoni ta' punt ta' ligi l-istess kumment tal-Bord huwa sostanzjalment korrett. Infatti nsibu li paragrafu 6.6 tal-Pjan ta' Struttura jghid hekk :-

> "The Structure Plan confirms the location of the Temporary Provisions Schemes."

Ma jfissirx dan li d-deficjenzi li llum gew riskontrati f'dawn it-Temporary Provisions Schemes ghandhom jigu perpetwati. Tant hu hekk li l-Pjan ta' Struttura stess jahseb li jsiru Pjanijiet Lokali biex anke ssir revizjoni tal-"layouts" tal-istess skemi. Policy SET 9 taqra hekk :-

> "During the interim period between the commencement date of the Structure Plan and the adoption of any particular Local Plan, applications for permission to develop in Temporary Provisions Scheme Areas will be judged in accordance with development control policies BEN 1, 2, 3 and 4, and SET 7."

(d) Il-Bord iddecieda l-punt krucjali jekk l-izvilupp propost mill-appellant kienx teknikament accettabbli :-

> "Il-Bord huwa tal-fehma li l-izvilupp propost jikser il-policies BEN 2 u BEN 4 apparti policies ohra tal-istess pjan li jikkoncernaw Rural Conservation Area, msemmija fir-ragunijiet mghotija ghar-rifjut tal-permess."

Ghalkemm il-Bord naqas li jispjega ghaliex l-izvilupp propost kien effettivament jikser il-policies li semma' l-Bord, pero' l-Bord jidher li laqa' s-sottomissjonijiet tal-Awtorita' tal-Ippjanar, fosthom li l-proposta tal-appellant kienet zvilupp :-

> “which disrupts its surroundings because of its mass and location, adversely affects the rural element of the visual composition. ….. The proposal has a discernible impact on the environmental quality of the existing area. The proposed development, if approved, would make it more difficult for the Planning Authority to resist other, equally unsatisfactory development proposals which, both individually an cumulatively lead to the erosion of the inland cliff, a characteristic habitat of the Gozitan environment. The Directorate therefore is aptly concerned over the potential harm to the ecological value of the inland cliffs. Although there are existing buildings on this part of the road the actual depth of the building on the horizontal level is so short as to necessitate construction in the vertical sense thereby obliterating the natural environment of the cliff face. The additional height of the current proposal below the street level is a matter of concern. There is little doubt that the dwelling would form a visually prominent intrusion into the cliff environment making the dwelling unduly obtrusive when viewed across from the village of Nadur and the valley leading to the Ramla l-Hamra and, detracting from the character of the countryside. The development would seriously affect visual amenity that no amount of landscaping would reduce that impact.”

15. L-appellant ma jikkontestax quddiem din il-Qorti ta’ revizjoni dawn l-interpretazzjonijiet tal-Awtorita’ tal-Ippjanar. Naturalment huwa jaf li kwistjonijiet bhal dawn ma jirrijentrawx fil-kompetenza limitatissima ta’ din il-Qorti skond l-artikolu 15(2) tal-Att Numru 1 tal-1992. Dan is-sub-artikolu jirrendi decizjonijiet tal-Bord bhala finali, hlief dwar punti ta’ ligi decizi mill-Bord li minnhom inghata appell lil din il-Qorti.

16. L-appellant jibbaza l-appell tieghu fuq l-allegazzjoni li l-Bord inkorra f’interpretazzjoni u applikazzjoni hazina tal-ligi ghall-fatti ta’ dan il-kaz meta rritjena li l-izviluppi f’siti vicini ma jintitolawx lill-appellant

ghall-hrug tal-permess fuq is-sit de quo u li l-applikazzjoni odjerna ghandha tigi governata mill-pjanijiet u policies vigenti llum.

17. Dwar l-ewwel aggravju, l-Qorti tinnota li quddiem il-Bord saru provi u riferenzi ghall-permessi ohrajn li nhargu f'siti vicin il-fond tal-appellant. Il-Qorti tinnota wkoll li l-Bord zamm access fuq il-post fejn nonostante li ma gie registrat xejn dwar il-meritu, il-Bord, ovvjament kellu okkazjoni li jara b'ghajnejh l-izviluppi kollha li saru fil-vicinanzi. Tinnota wkoll li l-Bord, fid-decizjoni tieghu, jghid li ha konjizzjoni tal-files relattivi li ghamlu riferenza ghalihom il-partijiet izda fil-motivazzjoni fil-paragrafi konkludenti tad-decizjoni tieghu, l-Bord ma jaghmel l-ebda kumment dwar dawn l-istess zviluppi fil-vicinanzi. Il-Qorti tahseb li l-Bord ma hassx in-necessita' li jaghmel dawn il-kummenti billi johrog car minn qari tad-decizjoni tieghu li l-Bord ma kienx qieghed jikkontesta l-fatt li s-sit kien jinsab f'arja fejn seta' jsir zvilupp. Pero', l-Bord, meta kkunsidra l-meriti proprji tal-proposta ta' zvilupp maghmula mill-appellant iddecieda li din ma kienitx kompatibbli mal-policies applikabbli ghas-sit.

18. Anke quddiem din il-Qorti, l-appellant ghamel sottomissjonijiet fis-sens li s-sit in kwistjoni kien jista' jigi kwalifikat bhala "infill site" u effettivament huwa ssottometta diversi dokumenti man-nota tieghu tat-12 ta' Lulju 1999 biex isostni din l-allegazzjoni tieghu. Din is-sottomissjoni giet kontestata mill-Awtorita' tal-Ippjanar fin-nota

responsiva taghha tas-6 ta' Awissu 1999. Wara li din il-Qorti kkonsidrat sewwa dawn in-noti ta' sottomissjonijiet jidhrilha li l-kwistjoni ghandha tithalla impregudikata minn din il-Qorti billi din hija kwistjoni purament teknika li ma tirrijentrax fil-gurisdizzjoni limitatissima lill-legislatur skond id-disposizzjoni citata iktar qabel.

19. Nigu issa ghall-aggravju principali tal-appellant. L-appellant qieghed isostni li gia' la darba fuq is-sit de quo kien inhareg permess li kien validu fi zmien meta inhareg u gia' la darba kienu diga' nbdew ix-xogholijiet ta' tahmil fuq l-istess sit in esekuzzjoni tal-istess permess, l-istess sit gie "committed' fis-sens li s-sid tal-istess sit kellu dritt kwezit li jkompli bl-izvilupp tieghu fuq dan is-sit. L-appellant isostni li l-Awtorita' tal-Ippjanar ma kellhiex tapplika ghal dan is-sit il-pjanijiet u policies godda li kienu gew introdotti wara l-hrug tal-ewwel permess fuq is-sit in kwistjoni sabiex bis-sahha taghhom tipprojbixxi li jsir zvilupp li jkun diga' gie sanzjonat. Fi kliem iehor, l-appellant isostni li l-Awtorita' tal-Ippjanar kif ukoll il-Bord applikaw retroattivament pjanijiet u polices li kienu totalment irrelevanti u inapplikabbli ghall-kaz tieghu.

20. Quddiem din il-Qorti qamet kwistjoni jekk l-appell fuq dan il-punt kienx ammissibbli in vista tal-gurisdizzjoni limitatissima ta' din il-Qorti li diga' sar accenn ghaliha. L-Awtorita' tal-Ippjanar qieghda ssostni li din il-Qorti m'ghandhiex gurisdizzjoni li tidhol fi kwistjonijiet tad-dritt li ma jkunux espressament decizi mill-Bord u in sostenn iccitat is-sentenza ta'

din il-Qorti moghtija fil-31 ta' Mejju 1996 fil-kawza fl-ismijiet Emanuel Mifsud vs l-Awtorita' tal-Ippjanar. Huwa veru li interpretazzjoni esklussivament litterali tad-disposizzjoni in kwistjoni twassal ghall-konkluzjoni li s-sottomissjoni tal-Awtorita' tal-Ippjanar hija wahda legalment korretta. Pero', l-gurisprudenza ta' din il-Qorti ma waqfitx biex tistrieh esklussivament fuq l-interpretazzjoni litterali tad-disposizzjoni in kwistjoni, cioe' l-artikolu 15(2) tal-Att Numru 1 tal-1992. Jekk punt tad-dritt ikun necessarjament involut fid-decizjoni tal-Bord, allura appell fuq l-istess punt ta' dritt ikun ammissibbli lil din il-Qorti ta' revizjoni, ghaliex il-Bord ikun iddecieda l-istess punt ta' dritt, sia' pure tacitament. Hekk, per ezempju, nsibu diversi decizjonijiet ta' din il-Qorti li ddikjarat appell ammissibbli meta tigi sollevata l-eccezzjoni li l-Bord ikun agixxa ultra vires. Dana sostanzjalment fuq il-fatt li l-Bord ikun iddecieda indirettament u tacitament li ghandu gurisdizzjoni li jiddeciedi kif iddecieda d-decizjoni tieghu.

21. Din il-Qorti, ghandha l-gurisdizzjoni li tikkonsidra u tiddeciedi jekk il-Bord applikax retroattivament il-policies tal-ippjanar li jsemmi fid-decizjoniji appellata tieghu.

22. Ghalhekk din il-Qorti trid tara jekk hijiex korreta s-sottomissjoni tal-appellant li qieghed isostni li la darba nhareg favur tieghu permess, qabel ma dahlet in vigore l-ligi tal-1992, allura s-sit kellu jibqa' jigi regolat esklussivament bil-policies antecedenti ghal din il-ligi. Jidher

car li l-izvilupp tal-appellant kif originarjament sottomess kien accettabbli, u ghalhekk inhareg il-permess tal-izvilupp ghalih. L-appellant kellu dover li fil-bini tieghu josserva strettament dan il-permess. Irrizulta li meta beda jsir it-thammil tas-sit sabiex isir il-bini skond dan il-permess parti mix-xogholijiet li saru kienu jmorru kontra l-permess mahrug lill-appellant. Fil-fatt tharget kontra tieghu mill-Awtorita' tal-Ippjanar avviz ta' twettieq u sussegwentement l-appellant ghamel applikazzjoni lill-Awtorita' tal-Ippjanar li biha biddel il-proposta ta' zvilupp dwar is-sit in kwistjoni. Jirrizulta mill-file numru 2265/1993 li gie esebit f'dawn l-atti li din l-applikazzjoni ghall-permess tal-izvilupp giet ricevuta mill-Awtorita' tal-Ippjanar fit-28 ta' Lulju 1993, izda giet konsidrata invalida ghar-raguni moghtija fl-ittra lill-appellant tal-10 ta' Awissu 1993. Sussegwentement l-appellant forna lill-Awtorita' b'xi taghrif addizjonali u l-applikazzjoni tieghu giet konsidrata bhala validament registrata fil-15 ta' Novembru 1993. Din il-Qorti ma taqbel xejn mal-appellant li din l-applikazzjoni kellha tkun regolata bil-pjanijiet u policies vigenti taht ir-regim antecedenti ghal-ligi tal-1992. Ir-raguni hija semplici. Si tratta ta' applikazzjoni gdida li kellha tkun regolata bil-pjanijiet u policies tal-ippjanar vigenti attwalment taht il-ligi tan-1992. Effettivament kemm l-Awtorita' tal-Ippjanar u kemm ukoll il-Bord tal-Appell dwar l-Ippjanar applika dawn il-policies ghall-applikazzjoni in kwistjoni. Fil-fehma tal-Qorti meta dawn l-awtoritajiet ghamlu hekk, huma kienu legalment korretti. Allura jsegwi li, meta l-Bord applika l-policies tal-ippjanar tal-Pjan ta' Struttura, huwa ddecieda, sia' pure

tacitament b'mod korrett il-punt tad-dritt dwar liema ligi kienet tapplika ghall-proposta ta' zvilupp meritu tal-applikazzjoni numru 2265/93 tal-appellant.

23. Konsegwentement, din il-Qorti, ghalkemm ma laqghetx l-eccezzjoni tal-inappellibilita' tal-appell odjern pero' waslet ghall-konkluzjoni li l-appell odjern huwa infondat fil-meritu u ghalhekk hemm lok li jigi michud. Fic-cirkostanzi kollha tal-kaz pero' din il-Qorti jidhrilha li ghandu jkun hemm temperament fil-kap tal-ispejjez.

24. Ghal dawn il-motivi, prevja li tichad l-eccezzjoni l-inappellibilita' tal-appell sollevata mill-Awtorita' tal-Ippjanar, tichad l-appell fil-meritu u ghalhekk tikkonferma d-decizjoni appellata tal-Bord. L-ispejjez jibqghu bla taxxa bejn il-kontendenti.

Dep/Reg

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